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MARITIME LABOR BOARD

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON COMMERCE
UNITED STATES SENATE

SEVENTY-SEVENTH CONGRESS

FIRST SESSION

ON

H. R. 4107

AN ACT TO EXTEND FOR TWO YEARS THE PROVISIONS OF TITLE X OF THE MERCHANT MARINE ACT, 1936, AS AMENDED

MAY 13 AND 14, 1941

Printed for the use of the Committee on Commerce

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MARITIME LABOR BOARD

TUESDAY, MAY 13, 1941

UNITED STATES SENATE,
SUBCOMMITTEE OF COMMITTEE ON COMMERCE,
Washington, D. C.

The subcommittee met at 10:30 a. m., pursuant to call, in the Commerce Committee Room, Capitol, Senator George L. Radcliffe, chairman of the subcommittee, presiding.

Present: Senators Radcliffe, Maloney, Mead, and Brewster.

Present also: Senator Burton.

Senator RADCLIFFE. Gentlemen, the subcommittee will come to order.

This is a hearing on H. R. 4107. This bill, which has passed the House, provides for the extension for 2 years of the Merchant Marine Act of 1936 through the amendment of section 1012. The bill is as follows:

[H. R. 4107, 77th Cong., 1st sess.]

AN ACT To extend for two years the provisions of title X of the Merchant Marine Act, 1936, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1012 of the Merchant Marine Act, 1936, as amended, is amended by striking out "three years" and inserting in lieu thereof "five years".

Passed the House of Representatives April 21, 1941.

Attest: SOUTH TRIMBLE, *Clerk*.

Senator RADCLIFFE. The committee has received numerous letters and telegrams, some of them protesting against the extension of this Board, and others not specifying what their attitude is but simply stating that they desire an opportunity to be heard. The committee will endeavor to hear everyone who wishes to be heard.

Dr. Bruere, do you wish to make a statement at this time?

Mr. BRUERE. Yes, Mr. Chairman.

STATEMENT OF ROBERT W. BRUERE, CHAIRMAN, MARITIME LABOR BOARD, WASHINGTON, D. C.

Mr. BRUERE. Senator Radcliffe and gentlemen: The Maritime Labor Board, as you know, was created under Title X of the Merchant Marine Act as amended on June 23, 1938. The provisions of the title gave the Board two principal duties:

SECTION 1004. It shall be the duty of the Board to encourage all maritime employers, their officers and agents and their employees * * *

(1) to make and maintain written agreements * * *

(2) to settle all disputes, whether arising out of the interpretation or application of such agreements or otherwise * * *.

In addition to that provision, section 1004, which is amplified in other provisions of the title, section 1010 of title X required the Board, on or before March 1, 1940, to—

> submit to the President and to Congress a comprehensive plan for the establishment of a permanent Federal policy for the amicable adjustment of all disputes between maritime employers and employees and for the stabilization of maritime labor relations.

Under these provisions of the bill, the Maritime Labor Board did submit to the President and to Congress on March 1, 1940, the report, a copy of which is before me, and which, in addition to reviewing the problems involved in the instructions to the Board, contains a series of amendments for the development of public policy as embodied in title X.

On March 13 and again on March 20 of the present year the members of the Board were granted the opportunity by Chairman Bland and the members of the House Committee on Merchant Marine and Fisheries to appear before that committee at a hearing on the Dirksen Bill and the recommendations of the Board.

On March 13 and 20, the members of the Board testified before that committee, and immediately thereafter Mr. Bland, in behalf of the committee, introduced H. R. 4107. The committee prepared and Mr. Bland submitted a report in support of H. R. 4107 which modifies title X as it stands by changing section 1012 of the title to read as follows:

> This title shall expire at the end of 5 years from the date of its enactment.

The title in the original bill provided:

> This title shall expire at the end of 3 years from the date of its enactment.

The report presented by Mr. Bland to accompany H. R. 4107 summarizes the activities of the Board during the then 2½ years approximately—2 years and 9 months—of its existence and contains seven reasons formulated by the House Committee on the Merchant Marine and Fisheries in support of the bill, H. R. 4107, to which I have just referred.

When title X was established, it is our understanding from the record that there were no partisans of the bill. You will recall, I think, the hearings before the Senate Commerce Committee, of which Senator Copeland was then chairman, and the cooperation given by the Committee on Education and Labor, of the Senate, at the request of, I believe, Senator Copeland, which resulted in the drafting of title X. It was frankly a compromise measure.

The history of the antecedent attempts at legislation is given in chapter 3 of the report to which I have already referred, submitted by the Board to the Congress on March 1, entitled "The Origin of the Maritime Labor Board." I shall not burden you, gentlemen, with a review of the antecedents of title X. I shall only call your attention to the fact that Mr. Bland, in commenting upon that, stressed the fact that the opposition to the Board and the disbelief in its probable effectiveness were almost universal.

The first year of the Board's existence was somewhat complicated by the fact that the bill as passed—title X as passed—was given an appropriation of $75,000, some $40,000 of which was frozen by the provisions of the title and by the further fact that, contrary to expectations, the Board was very promptly called upon to cooperate in adjustments of disputes in the maritime industry.

Up to January 1, 1940, the Board participated in 150 such disputes, involving practically every organization in the maritime industry, and the record of those disputes is also set forth in the report of Mr. Bland's committee at page 3.

This record shows that during the period 1935–37 there was a total of 348 strikes, an annual average of 116, in the maritime industry, as defined by title X; that the workers involved amounted to 134,698; and that the man-days lost were 3,892,214.

The record also shows that during the period 1938–40 as compared with 1935–37, the number of strikes was 140, or a reduction of 40.2 percent, and that the man-days lost were 3,090,037, also a very considerable reduction.

Of course, it would be very flattering to our self-esteem to claim that that was entirely due to the Maritime Labor Board. We make no such claim. Our experience indicates that probably the most important factor in bringing that about was the response of the industry itself to the declaration of public policy, contained in title X, which, with your permission, I shall read for the record, in order that it may have its appropriate place there [reading]—

TITLE X

SECTION 1001. It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of waterborne commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and the prompt and orderly settlement of all disputes concerning rates of pay, hours of employment, rules, or working conditions, including disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, hours of employment, rules, or working conditions.

On all coasts, as a result of that declaration primarily and also as a result of the initiative of employers, employers' organizations, and labor organizations, there has been a steady and, we believe, effective development of collective bargaining and the making and maintaining of agreements. Nevertheless, we believe—and the House committee, as Mr. Bland's report points out, concurred in that conclusion—that, as the result of the work of the Board, of its staff, and of its mediators, all of whom, I may say, are selected from a very extended civil service list, the Board has made a contribution to that stabilization of employer-employee relations in the American Merchant Marine which is indicated by the figures I have just recited from Mr. Bland's report.

I should be glad, and my fellow members of the Board, Mr. Chairman, would be glad to respond to your questions on the particulars of the statement I have made. This brief statement contains a list which was supplied by our Board of the disputes, the nature of disputes in the adjustment of which the Board participated, and the names of the employers and the active representatives of the labor groups—the unions—who were parties to those disputes and to their settlement.

Senator RADCLIFFE. Dr. Bruere, I understand that you consider that your duties cover not only matters of mediation but also the effecting of certain arrangements, such as collective bargaining, and that you have divided your time between those two objectives mainly.

Mr. BRUERE. Yes, Mr. Chairman. You will find in the list of controversies, disputes in the adjustment of which the Board participated, that only a certain percentage involved strikes or the immediate threat of strikes; that a great many of them were disputes arising under contracts in connection with which employers and employee representatives called upon the Board to cooperate in dealing with the problems that had arisen and had occasioned the dispute.

Senator RADCLIFFE. Dr. Bruere, do you feel that there was any clash between those two types of duties?

Mr. BRUERE. No. I think, Mr. Chairman, they very definitely supplement one another. For example, section 1005 of title X has a provision that has been extremely useful as bearing upon your question, sir. That section requires all maritime employees within 30 days of the enactment of the title to submit to the Board a copy of any agreement which the employer may have with any group of his employees and thereafter, within 10 days, of any modification of such agreement or of a new agreement to supplement those records.

Senator RADCLIFFE. Which type of duty has absorbed the greater part of your time, would you say?

Mr. BRUERE. I should find it difficult to estimate. During the first year and a half the members of the Board themselves and the research staff which the Board had organized devoted most of their time to study of the problems of the industry and to the making available, as in this report, of information which they were able to assemble. Its field staff during the first year consisted of only two men, the second man having been appointed in May of 1939.

The Board's mediators were engaged entirely in the adjustment of disputes, and the number of those even during the first year of the Board's existence was such that we supplemented the activities of those mediators by sending out into the field one or two of our research staff who had been trained in mediation work and also by ourselves going out into the field. So, the balance has been pretty even.

As a result, we have divided our time, I should say, about equally between those duties, the Board itself spending, I should say, more than half its time—considerably more than half its time—in preparation for these hearings and in analyzing the record, so as to make the substance of its experience and of the contracts in its possession practically available.

Senator RADCLIFFE. Is there any additional statement you desire to make at this time?

Mr. BRUERE. I should be glad to touch briefly upon one or two of the reasons given by Mr. Bland for his bill.

Senator RADCLIFFE. Very well.

Mr. BRUERE. May I read them for the record, because, it seems to me, they are concise? They are the result of hearings, they are the result of the study of the record before the committee, and they are the result of executive hearings by the committee, in which we were able to go over with the committee the facts with respect to a number of controversial issues that will, no doubt, be raised before your body and which we should also, may I say, be glad to have an opportnuity to discuss with you, sir, in executive session.

The first of the reasons stated by Mr. Bland's committee is this [reading:]

(1) Labor conditions in the maritime industry have greatly improved since the enactment of title X and the creation of the Maritime Labor Board.

(2) The record shows that the Maritime Labor Board has been effective in mediating labor disputes in the maritime industry.

(3) This is the only Government agency with which copies of all labor agreements are required to be filed and these have been studied by the Board with a view to promoting stable labor relations in the maritime industry.

(4) The mediatory work of the Maritime Labor Board has embraced all principal seafaring and shore organizations.

The fifth reason, it seems to us, is a very important reason:

(5) The continuation of title X will afford needed time for the careful consideration of the report and recommendations of the Maritime Labor Board submitted in compliance with title X of the Merchant Marine Act, and an opportunity to the Board to continue its study of the maritime industry and on the basis of its added experience and knowledge be better enabled to submit further recommendations from time to time.

(6) In these times of national emergency it would be unwise to continue the special agency charged with the duty of promoting stable labor relations in the maritime industry.

(7) The Board considers peculiar problems of a specialized industry.

I may add to that that the Board has a specially trained staff at this time to deal with these specialized problems.

Mr. Chairman, I do not want to burden you with any formal statement. I have gone over these matters so frequently, and we are so familiar with them, that I shall not continue the discussion at great length. I shall be glad, however, if you prefer, to answer your questions, and I should also be very glad if my fellow members, Dr. Bloch and Dr. Seehorn, may also participate in the discussion of such questions as your committee may desire to ask us.

Senator RADCLIFFE. Dr. Bruere, we may have some questions later on, and you will be given an opportunity then to answer them, if you so desire.

Does either Dr. Bloch or Dr. Seehorn desire to make a statement at this time?

Mr. BLOCH. Yes, Mr. Chairman.

STATEMENT OF LOUIS BLOCH, MEMBER, MARITIME LABOR BOARD, WASHINGTON, D. C.

Mr. BLOCH. Mr. Chairman, I hope that before these hearings are finished, we will have an opportunity to answer arguments which may be advanced against the enactment of H. R. 4107, now being considered by your committee.

Senator RADCLIFFE. You will have an opportunity, Dr. Bloch.

Mr. BLOCH. Thank you. I want to take a few minutes of your time, Mr. Chairman, to review very briefly the history of title X.

The question as to whether or not there should be a special agency to handle labor disputes in the maritime industry was considered at great length in the Seventy-fifth Congress. As a matter of fact, it was in 1937 and in early 1938 that there were introduced a number of bills to provide for a special agency to deal with maritime labor disputes.

Among those bills was a bill introduced by Congressman Bland and by Senator Guffey and Senator Copeland. In the House, extensive hearings were held on the bill introduced by Congressman Bland, and in the Senate very extensive hearings were held on the

bill introduced by Senator Copeland. At the time those bills were introduced to set up a special agency in the maritime industry there were witnesses who argued for and against the bills. In the Senate the hearings were on bill S. 3078 introduced by Senator Copeland.

At that time Chairman Kennedy, of the United States Maritime Commission, urged that Congress adopt special means of dealing with labor relations in the maritime industry. Similarly, Congressman Bland urged that special means be adopted. There was at the time no question at all in the mind of anybody who considered the question that something should be done with respect to the then existing turbulent labor relations in the maritime industry.

Senator BREWSTER. What was the precise time of that?

Mr. BLOCH. In 1938, sir.

Senator BREWSTER. That was right after the big strike on the West coast?

Mr. BLOCH. The first big strike on the Pacific coast took place in 1934.

Senator BREWSTER. What would you call the ones in 1936 and 1937? Would you call them sizable ones?

Mr. BLOCH. Very sizable, but the beginning was in 1934.

As I say, at the time everybody in Congress seemed to feel that something should be done with respect to labor relations in the maritime industry, and at that time the ship operators came before the Senate committee, and before the House committee as well, saying that something should be done with respect to that, and they offered—I think the record will support my statement—the recommendations made by Chairman Kennedy, of the Maritime Commission, that a special board be set up.

At that time the suggestion was made that a law be passed similar to the one which was then in effect and is now in effect for the railroad industry, providing for some compulsory features with respect to strikes—at least, considered by some as being compulsory features. It was then suggested, by Mr. Kennedy first, that the board be set up under the Railway Labor Act and that jurisdiction over disputes between maritime employees and employers be given to the National Mediation Board. Subsequently some amendments were made which had as their purpose the setting up of a board in the Maritime Commission itself that would deal especially with the maritime labor relations.

The opposition to those suggestions came largely, if not wholly, from the labor organizations. They did not want any special agency to deal with labor relations in the maritime industry. It was at that time that they were just beginning to reorganize, or to organize, in the maritime industry, and they were particularly afraid of any provision that might have prevented them from going on strike. At that time they did not have the collective agreements which they have at the present time. The unions did not want to be placed under the Maritime Commission because they felt that the Maritime Commission was an employer. It was operating ships for the Government account. The record will not disclose any opposition by employers to a special mediatory agency for the maritime industry.

But Congress did not adopt the exact recommendations of the Maritime Commission at that time, because Congress felt that the

thing ought to be tried voluntarily; that no compulsion should at first be introduced to prevent strikes or to interfere with the right of the men to strike. Instead, therefore, Congress enacted title X of the Merchant Marine Act; and, Mr. Chairman, I should like to call your attention to the report of the Senate Committee on Commerce on title X of S. 3078. This relates to section 45.

Senator RADCLIFFE. What is the date of that?

Mr. BLOCH. The date of this report is April 20, 1938.

That was just before title X was passed.

The purpose of my calling your attention and the attention of your committee, Mr. Chairman, to this report is to indicate to you and to your honorable body that it was at that time not the intention or the thought of the committee that you could stabilize labor relations in the maritime industry in 3 years. Neither did the committee at that time believe that a permanent policy was adopted by title X. On the contrary, your committee took the position that title X was merely the beginning of a development of a permanent policy in maritime labor relations.

Moreover, I desire to point out to you that the reasons why the Senate Committee on Commerce urged the enactment of title X persist today and are even more cogent today than they were then.

I am not going to read the entire report of your committee on section 45 of S. 3078, which recommended the adoption of title X, but I want to point out this:

> This new title sets the course for the development of stable labor relations on board ship and on the water front. It is intended only as a beginning and provides for its own expiration at the end of 3 years.

Then it goes on to say:

> The one fact upon which all witnesses seemed to be in agreement was that there is ample room for improvement in maritime labor relations. The Committee on Education and Labor has not only given its full cooperation, but has worked out the actual details of the title submitted. It affords a beginning from which a permanent policy and specific plan may be evolved in an orderly manner.

The report also says this:

> The need for some effort to stabilize relations between employer and employee on board ship and on the water front can hardly be overemphasized. The condition of maritime labor relations has been chaotic, and continues in a state of confusion sufficient to prevent the proper progress in development of an efficient merchant marine. The Congress has recently authorized an intense program of replacement of equipment for the merchant marine. It is equally important, in the opinion of your committee, that immediate steps be taken to improve and stabilize the relations between the employers to whom this equipment is entrusted and the employees who are engaged to operate it.

That was in April 1938, when your committee decided that there must be a special agency to deal with maritime labor relations, because Congress had authorized an extensive program of replacement.

What is the situation today with respect to the development of the merchant marine in our country? Have we stopped this development? Have we achieved our end with respect to that? No. I think the facts indicate very clearly that today we are embarked on an even greater program than heretofore in developing the merchant marine.

Commissioner Dempsey, on April 21, in a speech pointed out that the requirements of the emergency ship construction program call

for the delivery of 412 ships within the ensuing 2-year period. To carry out this program, $550,000,000 of the funds appropriated by the lease-lend bill have been allocated to the Commission, making a total of $900,000,000 to be expended in the next 2 years for the construction of emergency vessels.

The American Bureau of Shipping reports today that 800 ships, aggregating 5,055,450 gross tons were under construction or were to be constructed in American shipyards as of May 1 this year.

I submit to you, gentlemen, that if there was a strong need for the Board in 1938, there certainly is a more acute need for it today. If it was then necessary or desirable to establish a special agency to deal with maritime labor relations, certainly that necessity is more acute today than it was then. The Government is expending no less than a billion dollars in building a merchant marine. The Government, I say, has a special interest, a financial interest, in maintaining labor relations—peaceful labor relations—in the maritime industry. That is one special characteristic of the merchant marine.

I venture to say that no businessman who would invest a billion dollars in any business would for a moment hesitate to invest $150,000 a year or thereabouts in maintaining a personnel department for his business enterprise. Or, if a business were to invest $900,000,000 in equipment, certainly that business would invest in and maintain a personnel department.

I say that, in a sense, the Maritime Labor Board is the personnel department for dealing with labor relations in the maritime industry—at least, for encouraging and advancing the existing Federal labor policy in the maritime industry.

Senator BREWSTER. How large a personnel do you have?

Mr. BLOCH. Thirty-five people, altogether.

Senator BREWSTER. How many of them are mediators?

Mr. BLOCH. There are five adjusters.

Senator BREWSTER. You would recognize that the general labor policy of the Government at that time, so far as agencies to adjust matters were concerned, was somewhat different from the policy today, I suppose?

Mr. BLOCH. At that time?

Senator BREWSTER. Yes. We have since then created a Mediation Board which is, of course, now functioning but which was not then in existence.

Mr. BLOCH. I recognize that.

Senator BREWSTER. So, that would be a consideration additional to the ones listed in your statement?

Mr. BLOCH. Yes. My feeling in that respect would be that that is all the more reason for having this agency. I believe that the establishment of the National Defense Mediation Board, to which you are referring, is in no wise an argument against continuing the Maritime Labor Board.

Senator BREWSTER. In what way do its functions differ from yours?

Mr. BLOCH. Whenever we are unable to adjust a dispute, we refer it to the National Defense Mediation Board. To illustrate, if I may——

Senator BREWSTER. Well, I just asked you in what way its functions differed from yours.

Mr. BLOCH. I am sorry; I did not understand that. It differs in a number of respects.

In the first place, they are a court of last resort, as it were, although they have no compulsory powers. The Executive order requires that whenever the Conciliation Service cannot settle a dispute, it refers that dispute to the Defense Mediation Board. But, in the first place, it must be handled by the Conciliation Service. However, any disputes affecting railway employees are handled by the Railway Labor Board.

Similarly, whenever we have a dispute that we cannot adjust that we feel requires greater pressure, we refer it to the Defense Mediation Board. I was about to give you an illustration of that.

There was recently a ship tied up in the port of New York. It was a ship of the Seas Shipping Co. The ship was tied up by the engineers, who wanted a 50-percent bonus for going to South Africa. The employer, the Seas Shipping Co., had just given the unlicensed personnel a $50 bonus in addition to their pay for going to South Africa, and the engineers said that they wanted a 50-percent increase.

Our mediator in the field attempted to bring about a settlement. He attempted to bring about a settlement which we thought was fair and reasonable, but it was less than 50 percent. We could not settle it, so we referred it to the National Defense Mediation Board. The National Defense Mediation Board, after a number of conferences, did settle the matter by giving the men a 50-percent increase, just what they had asked for.

I do not think it is a reflection on any agency not to be able to settle some disputes. All disputes cannot be settled by such agencies. In this instance we did not settle the dispute.

Senator BREWSTER. Under those circumstances, why should any agency be disposed to rest a final decision with you when it can always appeal to the National Mediation Board and perhaps get more?

Mr. BLOCH. We have had a number of disputes. We have had instances, since the establishment of the board, where the union, in any event, said, "We want to go to the Mediation Board."

We told them, "You can't do that. The law is against it. You must take it up with us first."

We can point out to you instances where we have settled disputes that have not gone to the defense agency, when the union did want to go there, thinking that was the place to go.

Senator BREWSTER. You would in general recognize the value of a centralized organization to deal with all matters, would you not?

Mr. BLOCH. I think perhaps, Senator, in time; not in these times. I should like to leave the machinery pretty well as it is. I do not think this is the time to start experimenting with other ways of handling things by setting up a super mediation agency that would encompass everything that might be coming along.

Senator BREWSTER. Since when have you become an opponent of change?

Mr. BLOCH. Well, I have never been an opponent of change, but I have always been an opponent of hasty change. I do not think that in times of stress it is desirable to experiment with new plans.

I am not saying that this is an entirely new plan at all. It has been suggested time and again that a conciliation service or board be established to handle all labor disputes, with the exception, almost universally, of disputes of railroad employees.

Senator BREWSTER. I thought you had based your entire case up to this moment on the fact that your board was created in 1938 as a result of the tremendous stresses that were then prevailing and that it seemed necessary to make some changes in order to meet that situation. Now we are, of course, in an even more critical period, not only in maritime problems but in all other problems, so it does not seem logical that you should oppose any change, while before you advocated decided change.

Mr. BLOCH. I am not opposed to any change. Perhaps I do not understand your point whether it would be desirable to have one agency for all industries.

Senator BREWSTER. No. I pointed out that in 1938 the National Mediation Board did not exist, so there was every reason for having some agency such as yours to deal with the problem. Now we have a National Mediation Board, which, as you point out, has just settled a difficulty that you yourselves could not settle. I ask you whether or not, therefore, it does not militate against the reason for your existence.

Mr. BLOCH. I believe, Senator, you asked the question whether or not it would be desirable to set up a general conciliation service.

Senator BREWSTER. No; we have it set up. My question is whether it is not advisable to eliminate the duplication that obviously now prevails.

Mr. BLOCH. Well, the reason I misunderstood you was that I was thinking of Senator Ball's bill that there be one agency that will eliminate all other agencies, and that one agency would deal with all disputes.

Senator BREWSTER. We are not considering that.

Mr. BLOCH. Then, that is out of the question.

Senator BREWSTER. I am thinking simply of existing agencies.

Mr. BLOCH. Then, sir, I should say that if the National Defense Mediation Board were to have the jurisdiction that is now possessed by the Maritime Labor Board and by the National Mediation Board, which handles railway disputes—and by the Conciliation Service?

Senator BREWSTER. Yes.

Mr. BLOCH. Then, I think it would be no more or less than the Conciliation Service was to begin with, because originally there was a Conciliation Service of the Labor Department. That Conciliation Service had jurisdiction over all disputes in all industries.

Subsequent to that came the Railway Act and the National Mediation Board, which set up a board that specifically deals with labor disputes in the railroad industry only.

Subsequent to that came the Maritime Labor Board, which deals with the maritime-labor relations.

As a result of this war, there has come a supermediation agency, which does not go out into the field at all but always calls upon the witnesses to come to Washington. The Board does not function in the same way as the other agencies, because the other agencies always send their own people out into the field to try to settle the disputes on the premises. They talk to the employers and employees and frequently even draw up their contracts.

The job of mediation, Senator, is not so much to settle a strike after it has taken place, which really is the function of the National Defense Mediation Board, because it appears that almost every case in which there is a strike comes to them; the function of a mediation board, if properly performed, should be to avert and prevent strikes. That is really the distinction.

My opinion is that it would be unwise to ask the National Defense Mediation Board, created by Executive Order for a special purpose, to handle labor disputes in the same manner as the established agencies have been handling them. I may be wrong, but that is my feeling at this time.

Senator RADCLIFFE. Dr. Bloch, Dr. Bruere referred to two different types of activities. Do you feel that it has been desirable for the Board to carry on those two different types of activities at the same time? Have you found any special difficulties in your doing so?

Mr. BLOCH. Now, there are perhaps three steps in the handling of disputes. When the Board becomes aware of a dispute in the maritime industry, it immediately offers its services to both parties, the employer and the employees, in the public interest, asking them to meet with our mediator to try to iron out their differences.

If after a conference with the parties no agreement is arrived at, we then, as is required by law, urge upon them that they arbitrate. Title X so requires. We have no compulsory features, but we say, "Arbitrate."

Frequently that has caused some animosity. Employers sometimes don't like it because we urge them to arbitrate; sometimes employees don't like it because we urge them to arbitrate. But there is the public opinion behind it which frequently compels them to do so.

Another function of the Board has been, as the law requires, to encourage employers and employees to make and maintain written collective agreements. That is in accordance with the declared policy of Congress, which reads as follows, and it is title X of the Merchant Marine Act to which I am now referring:

> SEC. 1001. It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of waterborne commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and the prompt and orderly settlement of all disputes concerning rates of pay, hours of employment, rules, or working conditions, including disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, hours of employment, rules, or working conditions.

It is our duty to encourage employees so to do. In accordance with that, an employer or employee may say to the Board, "We are about to negotiate a contract, but we don't know how to get along; we don't know how to do it. We are making no progress. Won't you send someone to help us?"

It has been the policy of the Board to send a mediator out to help employers and employees to arrive at an agreement. I think that has helped a great deal in stabilizing labor relations in the maritime industry. I think it in no way interferes with the duty of mediation. On the contrary, Mr. Chairman, in cases where we have assisted both employers and employees in arriving amicably at an agreement, they

are only too glad to call upon the Board when a dispute arises under the agreement.

As a matter of fact, they usually insert in their agreements a provision that if any dispute arises, they shall call upon the Board to mediate; or if they can't agree among themselves, that the Board shall select an arbiter. That does not occur in all instances—in very few—principally because the Board has not yet been accepted by the industry, because of the fact that it has been temporary. We do not know what the Congress will want to do next year or the year afterward.

So, it works in a very excellent way. As a matter of fact, the record shows that conditions have gradually improved in the maritime industry.

I submit to you, gentlemen, this question: What would be your attitude toward the Maritime Labor Board if today conditions in the maritime industry were as chaotic as they were back in 1938? I am rather inclined to believe that you gentlemen would think we had not done our job well, and I think you would be justified in your belief, even though we put up all kinds of excuses for it.

Senator BREWSTER. What seems to be the basis of suggestions of bias upon your part?

Mr. BLOCH. Upon my part?

Senator BREWSTER. Yes.

Mr. BLOCH. I am glad you raised that question. I did not know I was biased.

Senator BREWSTER. I did not say you were biased.

Mr. BLOCH. I shall be glad to go into that. That is very interesting, and I thank you for asking that question, because I have been accused of bias.

Senator BREWSTER. Did you have any former connections that seem to approach it?

Mr. BLOCH. I have the whole history of it, and I shall be delighted to give it to you. Since you are asking about my former connections, may I give them to you very briefly? I shall give you my connections with the maritime industry before I became a member of this Board. The exact statement you will find in the executive hearings, a detailed account of my training and experience ever since 1917.

Senator RADCLIFFE. It is in the House hearings, where there is quite a full statement.

Mr. BLOCH. I was graduated from the University of Wisconsin in 1916 with a B. A. degree, and in 1917 I received the degree of M. A. from Columbia University.

I worked steadily from 1917 until 1941, taking no time off except a few days vacation from time to time.

During those 24 years I worked about 14 years for the State of California and 17 years for Uncle Sam. For the State of California, I was at times chief examiner of the division of labor statistics and law enforcement of the department of industrial relations. I was also chief statistician of that State. I was also director of the State Unemployment Commission.

For the Federal Government I worked in the Library of Congress for 1 year when I was a young man. I worked in the Employment Service for about a year. I ran an employment office for the Government.

I was connected with the National Longshoremen's Board in 1934 when the strike arose. In 1934, when the big strike took place, when the longshoremen went out, I was at San Francisco, where I had lived for many years.

The President appointed the National Longshoremen's Board, of which Archbishop Hanna was Chairman, Mr. Edward F. McGrady, Assistant Secretary of Labor, was a member, and Mr. Cushing was a member. I was selected as the executive secretary of the Board. I might say that I had the pleasure of working with Archbishop Hanna as secretary of another commission of the State, of which he was chairman. That was the California Unemployment Commission.

This National Longshoremen's Board was, first, a mediation agency to settle this strike, and later it was turned into an arbitration board for the industry. It so happens that that Board brought in an award on Ocober 12, 1934, which was more acceptable to the union than to the employers. I think that is fair to say. I think the ship operators will admit that. The award was more acceptable to the union than to the employers. It established hiring halls—joint-operation hiring halls—in the longshore industry where they did not exist, gave the longshoremen increases in pay, union recognition, and so forth, and so on.

I think that perhaps some of the ideas of bias arise out of the fact that I was connected with that Board. I will say this, Senator Brewster: That while I was chief statistician and chief examiner for the Labor Department of the State of California, I had occasion many times to go before the legislature in Sacramento and argue in behalf of labor legislation or amendments to labor legislation—the very legislation that Senator Hiram Johnson was responsible for when he was Governor of that State. I was alone at times before the committees in Sacramento, arguing in behalf of social security for our State.

Senator BREWSTER. After that time—1934—you were connected with the Federal Government?

Mr. BLOCH. Yes, sir.

Senator BREWSTER. In what capacity?

Mr. BLOCH. Of course, after 1934—that Board was a temporary board—I went back to my job as chief statistician with the Labor Department of California.

After that, in 1937, I came here as the result of a competitive civil-service examination. This is the first political job I have had. I should not say that; I do not look upon it as a political job. I think it is an expert job to be done.

Senator BREWSTER. You had better amend your comment on that.

Mr. BLOCH. Yes. Political appointment is what I mean. In 1937 I came here as the result of a competitive civil-service examination as Chief of the Division of Unemployment Compensation and Research for the Social Security Board, but I did not stay there very long, because Mr. Kennedy called me to the Maritime Commission as labor adviser to that Commission. I did not know anything about it, but I heard that Mr. McGrady recommended me to Mr. Kennedy.

I did not agree with Mr. Kennedy when he recommended his bill before the Senate, because he recommended compulsory features, which I did not.

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I was asked my opinion of the recommendation of the Maritime Commission with respect to labor relations in the maritime industry, and I wrote a very extensive memorandum in which I expressed my views against the compulsory features. You gentlemen took the same position on it at the time.

Experience has shown that that judgment with respect to compulsory features was justified. Volunteerism is the thing that stabilizes conditions in the maritime industry.

I really do not believe that the operators are very sincere when they say——

Senator BREWSTER (interposing). Our charges do not come from the operators. I have not heard anything from them.

Mr. BLOCH. I myself have been accused sometimes in the heat of controversy of being biased.

Senator BREWSTER. That comes from the conflicting claims of those primarily interested in labor. That is what I assume you must be cognizant of.

Mr. BLOCH. Yes; I am, Senator. It is very difficult during these days, when you have the C. I. O. and the A. F. of L. You have dozens of unions of all kinds in merchant marine industry, some affiliated with the C. I. O., some with the A. F. of L., and some being completely independent. It is very difficult to steer a course that will always free you from any possible charge of favoritism. I say that because it seems as though whenever a C. I. O. man is in favor of something, an A. F. of L. man is against it, and vice versa. You will find generally that when anything arises against a member of the Board, one party is for him and the other party is against him.

Senator BREWSTER. You feel that you have been extremely careful and discreet and have tried to avoid any action on your part that would lend any basis to such a suggestion about you, Dr. Bloch?

Mr. BLOCH. I feel, Senator, that I have always, all my working life, been a public servant and have learned to be impartial. I have no reason for being partial to anybody.

Senator BREWSTER. You would not feel that by reason of your mediations or decisions there would be any basis for any charge of favoritism toward one or the other union organization?

Mr. BLOCH. Well, there ought not to be any. In 1934 there was no C. I. O.; everything was A. F. of L. In 1934 the Board with which I was connected, and for which I was executive secretary, secured union recognition for the seamen. It was an A. F. of L. union at that time. We held an election which resulted in certification by the National Longshoremen's Board of the A. F. of L. union.

Senator BREWSTER. I do not want to take up too much of the time of the other Senators. I just wanted to get your reaction. You do not think there has been anything on your part to lend color to these suggestions?

Mr. BLOCH. I will say this, Senator: That it is often very difficult to be a go-between in a dispute going on, without being at one time or another subjected to criticism by one side or another, at least until the Board has been firmly established.

Senator BREWSTER. Usually a good judge is criticized by both sides.

Mr. BLOCH. That is right. That happens to us.

Senator BREWSTER. That seems to be your difficulty.

Mr. BLOCH. We have been criticized by employers and workers. You will find that is the case. Please remember that we have no such discretion as any judge might have. We do not make decisions with respect to anything. The only time we are called upon to decide anything is when both parties agree that we shall.

Senator BREWSTER. Have you been the subject of criticism by the C. I. O. group?

Mr. BLOCH. Yes. If you wish, Senator, I shall be glad to submit to you these newspaper clippings from San Francisco, since you are asking me about myself, in which you will find a newspaper editorial commending Louis Bloch for his excellent work in settling disputes in the maritime industry.

Senator BREWSTER. I shall be glad to read them later, but I do not want you to go into them now.

Senator RADCLIFFE. Dr. Bloch, you are called upon from time to time to mediate in regard to disputes?

Mr. BLOCH. Yes.

Senator RADCLIFFE. In cases where you attempt to make arrangements for collective bargaining and other agreements, it is my understanding, from what you have stated, that you feel that such activities are an advantage and not a detriment to you when you attempt to mediate?

Mr. BLOCH. Yes; they are an advantage to me—a great advantage—although unfortunately sometimes your best friends are your worst enemies. That is to say, when I was appointed to this board, one of the leaders of the I. L. W. U. made a public statement to the effect that this appointment is a very laudable one, because Dr. Bloch knows more about the labor relations in the maritime industry than anybody else who is not in the industry itself.

Senator RADCLIFFE. In other words, you feel that such a sequence of activities is a desirable one?

Mr. BLOCH. I think it is, sir, so long as the person is not pecuniarily interested in the industry.

Senator RADCLIFFE. I was asking whether there were any inherent defects in such a sequence.

Mr. BLOCH. No, sir; I do not think there are any inherent defects. I think the Senate Committee on Commerce had all the facts before it. The Senate Commerce Committee felt that I was fully competent to perform my duties, and I frankly believed that it was so.

Senator RADCLIFFE. I understand also that you feel that the tremendous development in the activities of the Maritime Board and also the creation of the other mediation boards, to which you referred just a moment ago, have not lessened, in your opinion, any advantages in having that same sequence of activities.

Mr. BLOCH. As of today?

Senator RADCLIFFE. Yes.

Mr. BLOCH. I do not think so.

Senator RADCLIFFE. If you do not understand my question I will restate it.

Mr. BLOCH. Please do.

Senator RADCLIFFE. You felt in the beginning that it was desirable to have a sequence of activities; in other words, that you should not only attempt to secure collective bargaining, for instance, but

that, later on, you should mediate if an occasion should arise. You felt that way then?

Mr. BLOCH. Yes.

Senator RADCLIFFE. Do you feel that there have been any developments growing out of the enlargement of our merchant marine and growing out of the creation of this Defense Mediation Board which, to your mind, would lessen the desirability of having the old basis of sequence continue?

Mr. BLOCH. No, sir; I do not think there have been.

Senator RADCLIFFE. In other words, if it was desirable then, there is nothing that has happened since then which would lessen, in your opinion, the desirability of having your Board continue to do both things?

Mr. BLOCH. On the contrary, I feel that it is more desirable now to have this Board continue.

Senator RADCLIFFE. I gathered that that was your testimony, but I wanted to ask a question to bring it out specifically.

Mr. BLOCH. I feel, Mr. Chairman, that in considering the question of whether or not the Maritime Labor Board—or its successor—should be continued, it is important to consider not only the desires of the employers and employees in an industry or the desires of the Maritime Labor Board, but it is also important to consider the public interest in the matter.

I submit, gentlemen, that neither the employees nor the employers are particularly qualified to judge what the best public interests are in the matter. They are partisans in all disputes. They tell us that they are the guardians of the public interest. They are not. If anyone is qualified to speak for the public interest, it is the Congress of the United States, which serves the people, rather than the parties.

On this very point of continuing the Board, I desire to call your attention to the recommendations, first of all, of the Maritime Labor Board with respect to that, and I wish to emphasize the fact that the Maritime Labor Board did not take the position that a special agency in the maritime industry would always be needed. Rather they took the position that there may come the time when the Maritime Labor Board will not be needed. Without wishing to take much of your time, I will just read a part of a paragraph from the recommendations.

Senator RADCLIFFE. Dr. Bloch, would it not be wise to let the Maritime Board testify on that, without your attempting to state their position?

Mr. BLOCH. I want to read an excerpt, if I may, from the report.

Senator RADCLIFFE. You are referring to your Board?

Mr. BLOCH. The Maritime Labor Board. I wish to refer to the report and recommendations of the Maritime Labor Board made to the Congress and the President, in accordance with the requirement of section 1010 of title X:

> The Board desires to make it clear that in recommending the continuation of title X and of a special governmental mediating agency for the maritime industry, it does not take the position that such special agency will always be needed. The Board does believe, however, that present unsettled labor conditions in the maritime industry make it desirable that there should be a specialized Federal mediatory agency with functions similar to those of the Maritime Labor Board. Such an agency will continue to be needed until such time as the maritime employers and employees have demonstrated their ability to protect their respective interests without jeopardizing the interests of the public through needless interruptions to the free flow of water-borne commerce or until the parties themselves have been able to agree upon a plan for the stabilization of maritime labor relations which commands the support of the Congress.

What is the significance of that, Mr. Chairman? Title X, in one of its provisions, required that the Maritime Labor Board submit a report to the President and to the Congress on what the future policy of the Congress should be with respect to maritime labor relations. Congress enacted title X for a period of 3 years, but it required the Board to bring in a report almost a year and a half in advance of its expiration as to what the future policy of Congress shall be.

As I stated before, the Senate Committee on Commerce in its report in favor of title X pointed out that title X was merely a beginning in the developement of a stable labor-relation policy for the maritime industry. Therefore, in compliance with the requirement of title X, the Maritime Labor Board submitted this exhaustive report on maritime labor conditions, the first time a report of this kind was ever written.

We made certain recommendations in that report, gentlemen, which probably have not met with the full approval of the Congress, although it has not really been considered in detail yet. Certainly it does not meet with the full approval of the ship operators or of the unions.

But the report which was submitted by the Maritime Labor Board calls to the attention of your committee, to the attention of Congress, and to the attention of the President the fact that certain conditions prevail in the maritime industry as regards labor relations which are unique and are very different from labor relations in other industries, and we therefore ask the Congress that consideration be given to those conditions, and we further ask the Congress that it study these recommendations, particularly the navigation laws of the country as they may affect collective bargaining.

In our attempt to carry out the duties imposed upon us, namely, the duty of bringing about stabilized labor relations through the orderly process of collective bargaining, we have come across situations that are not found in any other industry, in our experience.

For example, we have discovered that the requirement that a seaman sign shipping articles was frequently in conflict with the labor agreements which the seamen sign with the employers. At times when employees threatened to engage or did engage in concerted economic action, they were accused of mutiny. We felt that the law should be clarified with respect to that, because by removing the ambiguity in the law you would make it easier for the process of collective bargaining to be established and thereby stabilize labor relations.

Some have understood our suggestion to mean that we favor strikes, because we said that the law should be so modified as to make it possible for seamen to strike in safe domestic harbors without being accused of mutiny. We do not recommend that because we want to see the seamen strike, but because we do not want them to be liable to the charge of mutiny, when mutiny was not what they were engaged in, for we felt that that did not promote the orderly process

of collective bargaining. As a matter of fact, gentlemen, that was a year ago, in April 1940.

Last week the United States circuit court of appeals decided a case which dealt with a similar situation. Seamen employed by the Southern Steamship Co. were under articles to sail from Philadelphia to Houston, Tex. When they arrived in Houston, Tex., they were still under articles to return to Philadelphia. The seamen struck the vessel to enforce a collective bargaining with the employers.

When that happened, and the seamen said, "We are not going to sail the ship back," the captain called in the shipping commissioner of the port authority, and the shipping commissioner told the men that they were subject to 2 days for 1 for disobeying the command of the master of the vessel that they were engaged in mutiny.

The seamen persisted in their refusal to obey the order of the master to return to Philadelphia until the company capitulated. When the ship was returned to Philadelphia, the company discharged five sailors for refusal to obey the orders and for engaging in a sit-down strike.

The circuit court of appeals upheld the National Labor Relations Board by saying that the fact that the seamen refused to obey the order of the master when the vessel was safely moored in a domestic harbor was not mutiny. They had a right so to do, the court of appeals so held.

The employers said that they had a right to discharge those men because their articles were terminated in Philadelphia. The court held to the contrary, that failure to terminate articles does not mean the men can be discharged, because the employment is continuous, irrespective of the articles. That was held before by the Supreme Court also.

Senator BREWSTER. Do you mean to say that the employer is bound to employ the seamen?

Mr. BLOCH. I am sorry; I did not get the question.

Senator BREWSTER. I understood you to say that the articles were binding on the employer.

Mr. BLOCH. No, sir; I said this: That the position taken by the employer in that particular case was that since the articles were terminated in Philadelphia he had a right to discharge the men; but the court held that the employer-employee relationship is continuous, irrespective of the shipping articles. That is to say, the custom in the industry has been that, although the men sign off, they are always given the privilege of signing on again, and the refusal of the employer to permit them to sign on again was in effect a discharge. That was what the circuit court held, and the Supreme Court has also held that.

But when we have studied the industry this question has come up over and over again, and has always hampered the possible development of the orderly process of collective bargaining. Therefore, we requested that Congress give consideration to this law, and that it be clarified so that in the future the seamen would or would not be guilty of mutiny when they struck in a domestic harbor. That was the reason why we made that recommendation. But we were accused of bias because we made the recommendation that they be allowed to strike in safe domestic harbors.

Senator RADCLIFFE. Dr. Bloch, generally speaking, in the handling of the duties of your Board, with what kind of problems have you met the greatest difficulties or lack of success, and how do you account for that? Your Board has been in operation for several years?

Mr. BLOCH. About 3 years.

Senator RADCLIFFE. In your opinion, you probably find some things fairly easy to do? In some respects you probably feel you have been successful?

Mr. BLOCH. Yes.

Senator RADCLIFFE. In some respects you probably ran into a great many difficulties, I assume?

Mr. BLOCH. Yes.

Senator RADCLIFFE. What kind of difficulties have they been? What has been the cause of them, in your opinion?

Mr. BLOCH. Well, sir, the amount of difficulty encountered depends usually upon the demands made by the union or the employer—usually by the union.

Mr. RADCLIFFE. What kind of demands?

Mr. BLOCH. For example, the last demand I pointed out to you, in which the engineers wanted a 50-percent bonus for going into a danger zone. The Board then felt it was excessive. Maybe it was, or maybe it wasn't. They finally got their 50 percent.

Sometimes you find a union making demands which the employer considers excessive; or sometimes you find an employer making demands which the union considers excessive. You may find an employer refusing to hire additional men. So far, that has always given us a lot of trouble. That is the manning scale.

It is only natural for the union to seek employment for as many men as possible aboard ship. The union wants to have three assistant engineers, we will say, instead of two. In other words, the union generally demands more men aboard ship; the employer, fewer men. These are matters which frequently cause much trouble. For one thing, the employer does not have enough space aboard ship. He might want to put on more men, but he does not have enough space; he does not feel they are required. The union wants more men put on. Sometimes the refusal to employ one man—an extra radio operator, we will say—might cause a big strike.

We have had trouble with sanitary conditions aboard ship, conditions that do not arise at all in ordinary industry. The maritime industry is quite peculiar with respect to that matter. You find men that will go on strike because they do not like their sleeping quarters. Can you think of any other industry in which sleeping quarters play such a part? That is so in the maritime industry because the men sleep aboard ship. Labor conditions are more complicated in the maritime industry than they are elsewhere.

I think a great deal more could be said, Mr. Chairman, in pointing that out, but I am not going to take your time to do so except to say that the maritime industry presents problems which are quite peculiar and which, therefore, justify the enactment by Congress of title X and fully justify the Commerce Committee in recommending that it be continued for 2 years.

Senator RADCLIFFE. Dr. Bloch, have you any additional statements?

Mr. BLOCH. I should like an opportunity to reply to any argument that is made against this proposal.

Senator RADCLIFFE. You shall have that opportunity. I should like you to summarize your statement without affecting your chance to argue.

Mr. BLOCH. Then, Mr. Chairman, since you have been so kind as to say that I will have an opportunity to appear again to answer any arguments which may be presented against the Board, I shall now very briefly summarize.

In the first place, I called the attention of your honorable committee to the fact that when the Senate Commerce Committee approved the passage of title X in 1938, it then believed that that title was necessary in order to stabilize labor relations in the maritime industry. At that time, also, your committee, the report indicates, did not think that that could be done in 3 years, believing that the establishment of the Board and the enactment of title X were merely a beginning in the development of a permanent labor policy.

Secondly, I pointed out that the record shows that as a result of the activity of the Board, in part at least, labor conditions in the maritime industry have been greatly improved.

Thirdly, I have pointed out that since it was an argument in 1938 that the development of a merchant marine requires the establishment of a special board in the maritime industry, it is all the more true now, because today we are developing our merchant marine on a much vaster scale than we were develpoing it in 1938.

I have pointed out also that the maritime industry contains certain peculiar characteristics which are not found in any other industry and that, because of them, it requires special attention and consideration.

I have pointed out, furthermore, that the report of the Maritime Labor Board deserves your earnest consideration, and there is no better time, as Chairman Bland, of the House Merchant Marine and Fisheries Committee, put it, to consider those recommendations than now; that if the Board were given an extension of life for 2 years, it would have a chance to re-evaluate those recommendations and perhaps bring in additional ones to the Congress. It was, therefore, the expressed view of the Committee on Merchant Marine and Fisheries of the House that if given time, the Maritime Labor Board would give Congress an opportunity to study those recommendations.

This, Mr. Chairman, is, I believe, in brief what I have attempted to develop before your committee. I shall be grateful for a chance to come back and answer whatever arguments might be advanced against this Government agency.

Senator RADCLIFFE. Have you any questions at this time, Senator Maloney?

Senator MALONEY. No.

Senator RADCLIFFE. Senator Mead?

Senator MEAD. I have just a brief one. I think it can be answered yes or no.

Senator Brewster was talking about criticism and seemed to emphasize the fact that the criticism may have come from one or the other, or both—I don't recall—of the labor organizations. Have you been criticized by both labor groups and by the employers also?

Mr. BLOCH. Do you mean openly, publicly?

Senator MEAD. Is there any record of any criticism, as a result of your administration, from employers and employees?

Mr. BLOCH. Not in the record before your committee, except for the statement of the Senator.

Senator MEAD. Then, the criticism of your Board's action has come only from labor organizations?

Mr. BLOCH. No. Let me say this. One moment, Senator. I want to be truthful in my answer.

Senator MEAD. We have a sheaf of criticism here. I was wondering if you received any criticism as a result of your decisions from the shipowners and employers.

Mr. BLOCH. I think we have in our files probably criticisms as well as commendations from employers. We have commendations as well as criticisms from employers.

Senator MEAD. Well, have your commendations as well as criticisms from both the C. I. O. and the A. F. of L.?

Mr. BLOCH. Yes, sir.

Senator MEAD. They are in the record?

Mr. BLOCH. Wait a moment. We have commendations from the C. I. O.?

Senator MEAD. Yes.

Mr. BLOCH. Yes; we have. Very definitely, yes, we have.

Senator MEAD. And from independent unions?

Mr. BLOCH. Yes, sir; we have.

Senator MEAD. So, you can really say that your work has been commended by all parties of interest at times, and that at other times it has been criticized?

Mr. BLOCH. Yes, sir. I think that is right.

Senator MEAD. I wanted to get that clear.

Mr. BLOCH. Yes. To what extent, it is hard to say which overbalances the other.

Senator MEAD. That was not brought out clearly enough.

Senator RADCLIFFE. Thank you, Dr. Bloch.

Mr. Seehorn, do you wish to make a statement?

Mr. SEEHORN. I will be brief, Senator.

STATEMENT OF CLAUDE E. SEEHORN, MEMBER, MARITIME LABOR BOARD, WASHINGTON, D. C.

Mr. SEEHORN. My name is Claude E. Seehorn.

Do you want any of my personal history, Mr. Chairman?

Senator RADCLIFFE. Your personal history is, I think, covered quite fully in the hearings before the House, which are available to members of the committee.

Mr. SEEHORN. Mr. Chairman and gentlemen: For the sake of brevity, I wish to say that I endorse the statements by Chairman Bruere and Dr. Bloch.

Then, I should like to discuss, just for a moment, some of the peculiar phases of the industry, as I see them, from the standpoint of importance in the national defense and as a part of our transportation system, which all, to my mind, dovetail in with the problem we are dealing with.

As I understand the position of the Congress when wrestling with this question in 1938, at the time title X was enacted, it was freely admitted that Congress did not have the answers to the complicated problem of the industry, and in the hope that it might find a solution

and establish a reasonably stable maritime industry, it experimented with Title X, creating the Maritime Labor Board, instructing the Board to study the industry and report to Congress its findings and recommendations.

In addition to that, Congress instructed us to attempt to settle all disputes arising in the industry and made no exceptions. We were also charged with the duty of encouraging employers and employees to make and maintain collective bargaining agreements.

Then, Congress assigned to us this duty: that if the employer and the employees agreed to request us as a board to interpret the contract that was already in effect, we should do it. That phase of our duties is the only one that permits or requires us to make a decision.

Senator RADCLIFFE. Mr. Seehorn, both Dr. Bruere and Dr. Bloch have stated that the difference in the kinds of duties of the Board have been of such a nature as to be an advantage and not a detriment. Do you feel the same way?

Mr. SEEHORN. Yes, very much so. First, I recognize as one of the basic principles in this question that employer-employee relationship, usually expressed in the terms of collective bargaining, is nothing more than self-government. I believe in that.

I also believe that inexperience is of no benefit to anyone. I think the more you understand the actual problems of industry, the better qualified you are to deal with those problems on a sound basis. I recognize that we are all human and that there is always the opportunity for the fellow who does not quite get the sympathy or the decision that he hopes to get, to feel that his interests have been neglected. Sometimes prejudice is charged. None of us is free from those traits. They are not peculiar to labor; they are human traits.

So, we must accept those things.

I will say that I have been exceptionally well pleased with the volume and with the character of criticism that has come to our Board under the circumstances.

Senator RADCLIFFE. I asked the question not because I had anything very specific in mind other than the fact that I wondered whether you thought there was any inherent conflict between the different types of duties which your board has been trying to perform.

Mr. SEEHORN. No; I do not.

I wish to emphasize some of the reasons for that, based upon experience in another transportation field. We have had, until recently, two great transportation systems—now we have three or four—namely the water and the rail. Our Government and the public have dealt with these two transportation methods from a somewhat different basis, starting in about the same time and getting substantially different results.

My experience has been largely with the railroad industry for about 35 years. Since 1910 most of my time, and since 1916 all of my time until I came to this board, has been devoted to these very questions.

I think it was in 1897 that Congress wrote into the law—they did not call them unfair labor practices in those days—prohibitions against employers discharging employees for union activities or for refusing to agree not to belong to labor organizations.

The courts kicked that out as unconstitutional, but they did not annul the idea. In other words, our Congress and the whole public opinion approached the question on the railroads from the standpoint that there is an important service, and men charged with a responsibility—and there are many of them—must have that responsibility balanced as nearly equally as possible with their rights, and they said to the railroad men, "You have a right to be full-fledged American citizens, and you must be responsible for all your acts."

From that decision we trace it on until the present 1934 amendments to the Railway Labor Act, that have pretty well rounded out that feature, bringing forth as a result the fact that none of us worries much when we want to ride or ship by rail; we are pretty sure the train is going.

Now, those rights and those responsibilities are supplemented by many things. In other words, railroad men, long before I went with them, and up to the present time, have been devoting their time and their efforts, with the support of their Government, in devising ways and means to secure a job, establish an equity in it, hold it, perform it efficiently and meritoriously, and with a certain degree of stability that has brought a rather beneficial result. The Government has cooperated. Railroad men have not learned to be afraid of their Government.

So, the Government in recognizing that there is a triangle of employer, employee, and the public, has recognized its responsibility and made its contribution by providing ways and means, so that when the employer and employee are unable to reconcile their differences, the Government comes in and helps provide the way.

Now, I think we have made a mistake in calling that a cooling-off period or a waiting period, but I shall not go into that except to say that a waiting period—just a wait—is, in my opinion, a detriment. But when the Government provides a service in the hope of reaching a settlement or helping to reach one, which both employer and employee, except on rare occasions, are striving to accomplish, when otherwise they would be on strike or in turmoil or having so-called lock-outs, it is not a cooling-off period.

Senator RADCLIFFE. May I ask you what action the Board has taken in regard to the pending strikes on the Pacific coast? I am referring only to what I have seen in the newspapers in the last day or two.

Mr. SEEHORN. The pending strikes, as I understand it from the press, are in the shipbuilding industry, which is outside our jurisdiction, so we are not involved in that.

You will notice that in our recommendations we do suggest that the repair shops of the maritime industry be included under the jurisdiction of a special agency. But in this matter we are on the outside.

Senator RADCLIFFE. So, at present none of that affects your board whatsoever?

Mr. SEEHORN. No.

I want to follow this up just a little bit. When the Government provides such a service, the Government has the right to ask the employer and employee to maintain the status quo or not to disturb the peace during the time that the Government is helping to bring about a settlement. Some orator has misnamed that a cooling-off period.

It is not a cooling-off period. It is a period when this thing we call negotiation and mediation is going forward another step in these conferences. While the Government is doing that, it asks the parties to maintain the status quo in the hope of their reaching a settlement. Instead of its being a waiting period, it is a very active period.

Waiting period, to my mind, is a misnomer. That period is one of the most crucial periods in the process of collective bargaining. This is not a question that is dealt with or that should be dealt with as an emotional matter; it is a cold, hard business proposition that is governed by sound principles. It is the recognition of men's rights, the rights of employees, employers, and the public—honest recognition—and the assumption by each of their responsibility. That is why, in my opinion, Congress has said that the stabilizing influence of making and maintaining agreements is the answer to the question.

We do not find that so much until just recently in the maritime industry. I wish you gentlemen would read the Supreme Court decision of 1897. In 1897, at the same time that Congress was finding that railroad men had rights and that employers must not invade them by discharging them for the exercise of it, the Supreme Court found that the thirteenth amendment of the Constitution was not applicable to the maritime industry. There is a lot in that.

The Supreme Court said that the maritime employees are wards of the Government and should be treated as incompetents. Now, when I approached this subject, I wanted to find out why there was all this turmoil. I am not so much interested in a strike as I am in what caused the strike and how it can be prevented.

I found that the mediation in those two transportation industries was very different. Starting at a given time the public was recognizing these maritime men as incompetent but was recognizing railroad men as thoroughly competent. Just about the 6th of this month the court of appeals dealt very substantially with that question, saying that those men do have all the rights that other men in America have when there is no property damage and no danger involved. They have all the rights and all the benefits of other men under the laws of this country, and that includes the right to strike. The right to strike, Senator, and the use of the right, are, of course, two different things.

So, the Board in approaching the subject, as far as we can try to deal with it from the fundamental rights of the men and the necessities of the industry, always recognizing that Congress has said, and the courts have sustained the policy, that men have a right to organize, they have a right to say what kind of organization they shall have and will be affiliated with, and who will be their representatives—that is their exclusive right. Our Board has not questioned a group of employees any more than we have employers about the selection of their representatives. Whom they have selected, we have dealt with. Maybe we would not have selected the same representatives sometimes, but that is beside the question. We recognize that plain right.

I think we have been criticized sometimes because we did not refuse or at least hesitate to recognize the full rights of certain designated representatives as the designated and authorized representatives of the men. But we may expect that. So, when the employees decide what their organization will be and who their representative will be, we accept them without question.

Senator MALONEY. Were there any outstanding instances of criticism?

Mr. SEEHORN. No; not particularly. I don't think it was any more than I have heard all my life. I know the railroad organizations, the building trades, the typographical unions, and others, have always been criticized by someone on general principles.

Senator MALONEY. Yes. I asked the question only because you seemed to lay a little emphasis on it. I was wondering if there was one particular case that you had in mind when you spoke of the representatives selected by the union. I was wondering why it was you raised that question.

Mr. SEEHORN. The only reason I raised it was to emphasize the idea that we have felt it is not a decision for us to make. The press and the public have been very busy about certain representatives in the maritime industry.

Senator MALONEY. That is why I asked the question, "Are there any outstanding cases?"

Mr. SEEHORN. The outstanding cases are the ones we are all acquainted with. I would rather not indulge in personalities if I can avoid it.

Senator MALONEY. I do not want you to.

Mr. SEEHORN. We all know some of the outstanding accusations about certain men being subversive, too red, too far to the left, and so on.

Senator MALONEY. You may forget the question.

Mr. SEEHORN. I have thought that sometimes we should. In fact, I have been asked by public men if we dealt with certain representatives. My answer has always been, "We deal with the representatives of either the employers or employees, or other representatives, on the merits of the case."

One of the important features we have been confronted with has been the peculiarity of this industry as compared with shore industries. I wish you gentlemen could appreciate as much as I think I do that phase of the question.

When we think of a contract between employers and employees on shore, we think of the 8-hour day, not more than a third of their lives, dealing only with their working hours, their safety conditions, their annuity funds, their hospitalization, and sometimes their transportation to and fro.

But when we come over to this industry, we are dealing with 90 percent of the life of these men, their wages, their hours, their hospitalization, their recreation, their amusement—their whole life. We cannot apply to this industry, in my opinion, the same pattern that works in a coal mine or packing house or printing shop or on a railroad. The maritime worker cannot take a walk in the park when he is out on the middle of the ocean; he cannot go to a movie; he cannot go to see his girl; he cannot go down to the corner and have a drink; he cannot go home to see his family. It is a requirement of the industry that should be compensated for by a great deal of consideration of the mental attitude that it develops in those men.

Now, I want to call your attention to what I think I have found out about this failure to observe orders in this industry. It has become very important to me. When I came down here, like a typical American I was not very sea conscious. I had been told, like a great many

others, that this was a peculiar class of people, very different from other people. Well, I did not know. I tried to make it my business to find out what these fellows wanted. What were they trying to get? What were they willing to give?

I went to the union halls and to the hiring halls and met their representatives, and their representatives came to our office and came to my hotel room. I discussed with those people every phase of the question. I have found these people to be just like you and me.

Let us get to this subversive question. Wherever we turn in Washington or any other city, we find a lot of law enforcement to help us. But when these men get out at sea, there is no law-enforcement officer there but themselves. The captain? Surely, he is in charge, but one man can't enforce his orders on the whole crew. Neither can the licensed officers enforce them on the whole crew if the crew does not wish to be ordered.

I have found that seamen as a whole, licensed and unlicensed, are a most thoroughly self-governing group of people, because since there is no one there to enforce the law, they discipline themselves.

What do they want? They want better wages and better working conditions, just as you and I do. Above all, they want safe conditions and they want security. I have found in this industry the greatest lack of security of any industry I am acquainted with. These men do not have seniority, like the men on the railroads. They do not have the standing that civil-service employees have. The tradition has been that they are required to sign articles, and when they have completed the voyage to sign off.

Up until the *Waterman case* last month and the court of appeals decision a week ago last Monday, it has been the conception that when the seaman signed off, the whole employer-employee relationship was terminated and the continuity of employment broken. That was a disturbing influence when compared with other industries. Men, unless they have some hope of security, became dissatisfied and, although the courts are now finding differently, the remedy for that phase has not been beveloped in this industry, and cannot be developed except through the processes of conference between employers and employees, with the assistance of the Government.

Senator MALONEY. I wanted to ask you if you felt you were making satisfactory progress in that direction.

Mr. SEEHORN. We have made more progress, Senator, than I had hoped to be able to make when I first came onto the job. It is very slow. It is a tough job. There is a long way to go.

When we finally decided on what we would cover in our report, and you could write more volumes on it if you were a good writer—I am not—than you could stack on that table, we decided, in all of our search, no Government agency had ever approached this subject with the attempt to lay the foundation for a sound, workable labor-relations policy. We found that every approach was the result of some sensational disaster or some political scandal in the industry, and that is an awfully poor approach. So, we started in to see if we could find a sound basis upon which to approach the subject. We may find that a lot of our angles are wrong, but we wanted to find some place that was sound and to build on that. That was our attempt in our report.

It has not attracted much attention, but we do believe it is the basis of starting. If these principles are as sound as we believe they are, with proper study, with a proper test in the light of experience, of course, they will be revised and built upon as the railroad industry has, as every other industry has, and as our Government itself has.

So, we believe that the only sound approach that the Congress can make is to continue recognizing the pecularities—and there are many—of this industry and to deal with them on their merits honestly and in the public interest, and not to try to say that because some scheme works in a packing house, on a railroad, or in a printing shop, it must work in the maritime industry. The maritime industry has its peculiarities that must be met. Its importance calls for it. There is intelligence enough in America to do it. It is going to be difficult to convince me that out of 130,000,000 people in this country an industry as important as the maritime industry cannot be manned by competent, free men who have their rights well prescribed and are willing to assume their responsibilities of citizenship in their career.

Senator MALONEY. I ask this question because this industry is so very, very old——

Mr. SEEHORN. The oldest one we have. The first white man came over here on a boat.

Senator MALONEY. That is right. Do you feel that Congress has neglected its responsibility?

Mr. SEEHORN. I think we all have. I do not like to put it that way. I do not like to indict anybody because I do not like to be indicted myself. I do not want to put it in the form of an indictment. I think we have missed our guess too often in dealing with this industry. I think we have tried to operate this industry on the theory that the Supreme Court mentioned in the case I cited. The Supreme Court, in rendering its decision in 1897 (sometimes referred to as the *Argo case*), traced this industry back to 900 years before the birth of Christ, in order to show that this industry has always operated on the basis of a ward of the Government or on an incompetent basis.

I just do not understand that. We cannot expect the highest degree of efficiency, loyalty, and service from a group of men who we say are incompetent to start with. We have just been dealing with this thing in the wrong way. This is a service that requires men—intelligent men—whose rights are well understood and well defined; men who are responsible men; and I think we have them if we will just approach the problem from the standpoint of not indicting these people but of trying to understand their problems.

I want to get to that phase of our work in just a minute, but I want to mention the court's decision, because I want you people to read it and have the background.

Senator MEAD. Do you make the point, Commissioner, that your Board began to operate on that premise?

Mr. SEEHORN. That is the approach, absolutely.

Senator MEAD. This idea of their being incompetent was erroneous, and now the courts have sustained that attitude, as it were?

Mr. SEEHORN. That is right. The case I have reference to is the case of *Robertson* v. *Baldwin* or the *Argo case*.

Senator MEAD. Is that the first decision of that character that has ever been handed down?

Mr. SEEHORN. No; there have been many decisions. It has been the general attitude of our Government and the courts.

I want to call your attention to a decision that Dr. Bloch mentioned, in which the dissenting opinion points out in a very mild way this general trend of the tradition of the sea and the fact that these men have no rights as long as they are under articles. In other words, even when the boat is moored to the pier, the men must obey the command of the master, because the law says they must obey the lawful commands of their officers. Of course, no man, including myself, would issue an order and at the same time say it is illegal.

Senator MALONEY. What case are you talking about now?

Mr. SEEHORN. The case decided on the 6th of this month by the United States Court of Appeals, the case of the *Southern Steamship Co.*, No. 7,435, October term, 1940, *Petitioner* v. *National Labor Relations Board*, May 6, 1941.

Senator MALONEY. I should like to have them in the record, Mr. Chairman.

Mr. SEEHORN. I should like you to read both of these decisions and also the dissenting opinion of each one, because the dissenting opinion in the case of *Robertson* v. *Baldwin* is to me exactly what the court of appeals has now found.

Senator RADCLIFFE. They will be placed in the record and will be available.

(The court decisions referred to are as follows:)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT

Southern Steamship Company, Petitioner, v. *National Labor Relations Board, Respondent*

No. 7435. October Term, 1940

ON PETITION TO REVIEW AND SET ASIDE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

OPINION

(Filed May 6, 1941)

Before BIGGS, MARIS, CLARK, JONES, and GOODRICH, *Circuit Judges*.

MARIS, *Circuit Judge*.

This is a petition by the Southern Steamship Company to review and set aside an order of the National Labor Relations Board directing the Company to cease and desist from certain unfair labor practices in which the Board found it had engaged, to bargain collectively with the National Maritime Union of America as the exclusive representative of a specified unit of its employees, to offer reinstatement with back pay to five employees discriminatorily discharged, and, upon application to reinstate certain striking employees.

Following a hearing upon a petition to certify collective bargaining representatives the Board on July 16, 1937, directed an election to be held by a unit of the Company's employees consisting of the unlicensed personnel employed in the deck, engine, and stewards' departments on vessels operated out of Atlantic and Gulf ports, except wireless and radio operators, chief electricians on electrically-driven ships, and junior engineers who hold licenses. The election was held on the Company's seven vessels in October 1937 and disclosed a majority in favor of the National Maritime Union of America.

On January 26, 1938, the Board certified the Union as the exclusive bargaining representative of the employees in the unit mentioned.

Shortly after January 26, 1938, and at various times thereafter, officers of the Union sought to arrange collective bargaining conferences with the Company. The Company, however, at all times refused to bargain with them. This it admits, although it denies that any effort was made by the Union to open negotiations prior to August 18, 1938. The Board, however, found upon substantial evidence that such efforts were made as early as the end of January or the beginning of February 1938.

In defense of its refusal to engage in collective bargaining with the Union the Company contends that the designation of the Union was invalid because the election was improperly conducted. Its complaint is that the Board at the election held on the first of its vessels refused, in the absence of consent of the labor organizations involved, to permit the Company's representatives to be present to identify voters and to see that the election was properly conducted. At the elections held on the six other vessels such consent was given and the Company's representatives were present.

A certification proceeding is of a nonadversary, fact-finding character in which the Board plays the part of a disinterested investigator seeking merely to asertain the desires of the employees as to their representation. Section 9 (c) of the National Labor Relations Act (29 U. S. C. A. § 159 (c)) confers a wide discretion upon the Board as to the manner in which this investigation shall be made. The Board may take a secret ballot of employees or utilize any other suitable method. It may, of course, call upon representatives of the employer to assist it in identifying employees appearing to vote. On the other hand, it may take the view, as it evidently did in this instance, that since the presence of such representatives, unless consented to, might operate in some degree to coerce the employees and prevent them from expressing their free choice, some other means of identifying voters should be employed. The Act confers no right upon the employer to have its representatives present and it is obvious that their presence is not essential to a fair election. Indeed it is not contended in the present instance that any person voted who was not entitled to do so or that the election was conducted unfairly. The action of the Board in excluding the Company's representatives was accordingly within its discretionary power. *Marlin-Rockwell Corporation* v. *National Labor Relations Board*, 116 F. 2d 586.

It follows that the Company was guilty of an unfair labor practice in refusing to bargain with the Union as the chosen representative of its employees, and that the Board rightly ordered the Company to cease and desist from this unfair labor practice, and, upon request, to bargain collectively with the Union as the exclusive representative of its employees included in the bargaining unit already described.

On July 17, 1938, one of the Company's vessels, the *City of Fort Worth*, was at dock at Houston, Texas, in the course of a voyage from Philadelphia to Houston and return. On that day thirteen unlicensed seamen of the vessel met at the union hall in Houston to find out what had been accomplished by way of obtaining a bargaining conference with the Company and passes enabling Union delegates to board its ships when in port. Upon being informed of the Company's refusal to meet or bargain with the Union, the men unanimously voted to go on strike the following day in order to compel the Company to recognize the Union and issue boarding passes to its delegates.

At 8 o'clock A. M. on the next day, July 18th, while the vessel was moored to the dock at Houston, the strike was begun when Tracey, an oiler, failed to turn the steam "on deck" for the purpose of loading cargo. Pool, the first assistant engineer, discovered the failure of steam and was told by Tracey that the ship's unlicensed personnel was on strike for Union recognition and the issuance of boarding passes. Pool then said that he would put the steam on deck himself, and Tracey replied that in that case he would "have to take the firemen out of the fire room." When Pool turned the steam on Tracey called upon the fireman on duty, Braun, a member of the Union, to join the strike, which he did. At this time, Ferguson, a fireman, appeared to relieve Braun, whose watch had ended. But Ferguson, who was also a Union member, refused to tend the fires, and he and Braun promptly left to join the eleven other strikers who were seated on the poop deck, the general meeting place of the seamen when off duty. The second assistant engineer immediately took over the care of the fires, and

the ship's officers, with the assistance of the six unlicensed seamen who did not join the strike, then proceeded with the necessary operations for the loading of cargo.

At about 10:30 o'clock A. M. the ship's master, Captain Rudan, came on board. He at once informed the strikers that their conduct was in violation of the ship's articles which they had signed, and ordered them individually and collectively to "turn to", which they each and all refused to do, Warren, their spokesman, telling him that they were striking for Union recognition and boarding passes. Captain Rudan then brought aboard a deputy United States Shipping Commissioner, who informed the strikers that according to their articles they had agreed "to be obedient to the lawful commands of the master," and warned them that they were "subject to being logged two days for one" for not obeying orders. The men, however, refused to abandon the strike. Throughout the day they remained seated on the poop deck in an orderly manner. At no time were they ordered to leave the vessel; on the contrary, they were, in regular course, served their mid-day meal by one of their own number, Smith, a mess boy.

Late in the same afternoon the Company's local attorney, after telephoning its superintendent at Philadelphia, advised the Union's attorney that if the strike were called off he would recommend that the Company issue boarding passes to the Union's shore delegates, action concededly tantamount to Union recognition. Relying upon this promise, the Union's attorney advised the men to terminate the strike, which they did at 7 o'clock P. M., and resumed their stations. Finding the foregoing facts upon virtually undisputed evidence, the Board properly concluded that the strike was caused by the Company's unfair labor practice in refusing to recognize and bargain with the Union.

The strikers having resumed their duties with the approval and consent of Captain Rudan and the other officers, the ship sailed on schedule the same night. During the return voyage to Philadelphia they performed their duties satisfactorily. Nevertheless, Captain Rudan, after consulting the ship's officers, decided not to reship five of the strikers, Warren, Tracey, Ferguson, Pfuhl, and Smith. Accordingly, when the vessel docked at Philadelphia on July 25th, and the crew signed off the shipping articles, these five men were informed that they would not be reshipped. During the return voyage the Union members of the crew had decided to strike if any one of their number were to be discharged upon arrival at Philadelphia. Accordingly, when the other Union members of the crew learned of the discharge of their five fellow members, seven of them, Crassavaz Reeves, Latham, Burns, Hughes, Neeley, and Holt, left the ship in protest. One of them, Crassavaz, subsequently reshipped.

The Board found that the five seamen were discharged because of their active participation in the strike of July 18th, that their discharge constituted a violation of the Act, and that it was because of their unlawful discharge that the seven other seamen went out on strike on July 25th. The Board accordingly ordered the Company to offer reinstatement with back pay to the five seamen who were discharged, and, upon application, to offer reinstatement to the seamen who went out on strike on July 25th. The Company strongly urges that the order should be set aside because the five seamen were not discharged since their employment relation automatically ended when they signed off the shipping articles on July 25th, and because, if they were discharged, their discharge was warranted for reasons not connected with the strike, and in any case their discharge was justified, since they had participated in an unlawful "sit-down" strike and had, as seamen, breached their shipping articles by participating in it.

The statute (46 U. S. C. A. §§ 563, 574) requires that seamen sign shipping articles at the beginning of each voyage and sign off the articles at its conclusion. The statute, however, was for the protection of seamen, and was not intended "to forbid the parties from mutually undertaking to assure a crew the right to continue as employees and to re-sign if it desires after signing off articles at a voyage's end." *National Labor Relations Board* v. *Waterman Steamship Corp*, 309 U. S. 206, 212. In the present case the Board found that the tenure of employment of the Company's seamen was not terminated by the mere expiration of shipping articles. This finding is fully supported by the evidence that new articles are ordinarily signed as the old articles are signed off, and that in any case the seamen consider themselves engaged for the new voyage unless notified to the contrary. In this connection it is quite significant that the captain and other ship's officers in their testimony referred to the five men as having been "discharged" or "fired." All five had been previously employed for periods varying from six weeks to eighteen months. We find no error in the Board's conclusion that they remained employees after the expiration of the voyage and that they were discharged by the Company.

Nor is there merit in the Company's contention that the men were discharged for reasons unconnected with the strike at Houston on July 18th. There is ample evidence to support the Board's finding in this respect. Indeed the Company's officers frankly gave as a principal reason for the discharges the refusal of the men to obey the ship's officers during the strike, and the other reasons now urged were not suggested prior to the hearing before the Board. When the Company on the day following the discharges, wrote to the United States Inspector at Philadelphia advising him of the dismissals it limited its reason to the fact that during the strike at Houston the men "refused to obey anyone connected with the ship's or Company's officials."

We accordingly come to the consideration of the principal contentions of the Company; namely, that it had the right to discharge the seamen because the strike in which they had participated was an unlawful one and because they had violated the law of the sea and breached their shipping articles by participating in it. It is contended by the Company that the strike was an unlawful "sit-down" strike and the discharge of the strikers was therefore justified under the rule laid down in *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240. With this contention we cannot agree. The strikers were guilty of no violence or other unlawful conduct. They did not take or hold possession of the ship, as the captain and chief engineer both admitted at the hearing. They merely withheld their services during the eleven hours of the strike, without interfering in any way with the work of the officers and nonstriking members of the crew. Sitting on the poop deck, the usual place for members of the crew to meet when off duty, did not make them trespassers, for the ship was their home and they were at no time ordered to leave it. We conclude that the strike was not so unlawfully conducted as to deprive the participants of the protection of the Act under the doctrine of the *Fansteel case.*

Did the breach of their agreement in the shipping articles to obey the commands of the master deprive the striking seamen of the protection of the Act and justify their subsequent discharge? We agree with the Board that it did not. In so holding we confine our consideration to the facts of this case. If the strikers had been guilty of criminal acts of violence or of forcible detainer of the vessel the doctrine of the *Fansteel case* would doubtless have justified their discharge by the Company. If their refusal to obey the directions of their officers had taken place while their ship was at sea or at anchor in an unsafe port subject to the perils of the sea so that obedience was essential to the safety of the vessel their action might well have transcended the legitimate bounds of action in a labor dispute and have constituted a revolt or mutiny. *Rees* v. *United States*, 95 F. 2d 784.

In the present case, however, during the whole period of the strike the ship was safely moored to the dock in the harbor of Houston, a domestic port. The strikers were guilty of no unlawful conduct. While they withheld their services, sufficient steam was maintained for the operation of all of the ship's sanitary and safety appliances. The chief engineer admitted at the hearing that the ship was not in danger at any time. The question whether under such circumstances American seamen may strike without becoming guilty of a revolt or mutiny has received no recent adjudication.[1] Such modern authority as there is upon the right of seamen to strike is negative. So we find that Section 2 of the National Labor Relations Act does not exempt employers of seamen from its provisions, whereas it does expressly exempt carriers subject to the Railway Labor Act (29 U. S. C. A. § 152). Also in two recent decisions by the Circuit Court of Appeals for the Second Circuit (*Weisthoff* v. *American-Hawaiian S. S. Co.*, 79 F. 2d 124, and *Black Diamond S. S. Corp.* v. *National Labor Relations Board*, 94 F. 2d 875) the right of seamen to strike may be inferred.

In the *Weisthoff case* members of a ship's crew were allowed to recover wages earned, although they had left the steamship before the termination of the voyage.

[1] Justice Story, sitting at circuit, ruled on a number of occasions that the refusal by seamen to put to sea amounted to endeavoring to make a revolt. *United States* v. *Hamilton* (1818), Fed. Cas. No. 15291 (the vessel was in Salem harbor and the crew objected to the substituted master); *United States* v. *Gardner* (1825), Fed. Cas. No. 15188 (the vessel was in Boston harbor and the crew demanded that they should have a day watch below in the forenoon during the whole voyage); *United States* v. *Cassedy* (1837), Fed. Cas. No. 14745 (the vessel was in St. Helena and the crew objected to the substitution of the mate for the captain as master).

They had shipped at San Francisco for a trip to Gulf and Atlantic ports and return. When in New York Harbor the crew made demands upon the master, refused to work until their demands were satisfied, and refused to leave the ship until police were called aboard. They then left. The court found that certain of their demands were justified and that the making of the other demands did not amount to a revolt or desertion. In the *Black Diamond S. S. Corporation case* the court affirmed the Board's order directing the reinstatement of seamen who went out on strike while their vessel was in port.

On the other hand, in *Rees* v. *United States*, supra, seamen who participated in a strike while their vessel, the steamship *Algic*, was in the harbor of Montevideo, Uruguay, were found guilty of endeavoring to make a revolt in violation of section 292 of the Criminal Code (18 U. S. C. A., § 483). The defendants there contended that "the crew of a vessel which is moored to a dock or is at anchor in a safe harbor have the right to strike," but the court said that that question was not before it for decision because the "*Algic* was not in fact moored to the dock or at anchor in a safe harbor, but was in such a position that the obedience of the crew to the orders of the master was essential to her safety. In such a case, the same rule is applicable as though the vessel were at sea, as this court decided in *Hamilton* v. *United States* (4 Cir. 268 F. 15)." In *Peninsular & Occidental S. S. Co.* v. *National Labor Relations Board* (98 F. 2d 411) seamen engaged in a sit-down strike. They took possession of the ship, refused to let the electrical equipment furnishing light or the pumps supplying the sanitary arrangements of the ship to be used, and refused to permit any food to be served to anyone but themselves. The ship was prevented from sailing and the passengers had to be sent ashore and housed at the expense of the Company. The discharge of the strikers at the end of the voyage was held not to be an unfair labor practice.

It is, therefore, clear that upon authority the question of the right of seamen to strike under the circumstances of the case before us is still an open one. Upon reason, however, we think that there is no sound basis for depriving seamen of this right when, as here, their vessel is moored to the dock in a safe domestic port. Whether the right exists in a foreign port we need not now decide. There is undoubtedly a general rule of the maritime law which exacts from the seamen implicit obedience to the commands of the master. The absolute power thus conferred upon the master is necessary at sea for the protection of the lives and property entrusted to his care. When his vessel is safely in port the necessity for such high power is largely gone. (The Blake, 1 W. Rob. 73, 166 Eng. Rep. 500; *Buddington* v. *Smith*, 13 Conn. 334, 33 Am. D. 407; The South Portland, 111 F. 767.)

In The Blake, supra, the English High Court of Admiralty held that the refusal by members of the crew, while the vessel was docked, to put to sea was not mutiny. Dr. Lushington, speaking for the court said (p. 506):

"It is also to be observed that the occurrence took place in port, where the ship was exposed to no hazard; and I draw a strong line of distinction between disobedience of orders in port and any insubordination whatever when the vessel is on the high seas, where it might expose to destruction the ship, cargo, and the lives of all on board.

In The South Portland, supra, it was held by the District Court for the District of Washington that it was unlawful for a master to cause the imprisonment of a member of his crew in a foreign jail, because of his refusal, when the vessel was in port, to proceed on a voyage. It must be concluded, we think, that when a vessel is safely moored in a domestic port the maritime law does not require the denial to seamen of the right to strike which is now freely accorded their fellows who labor on the land. We note that students of the subject have reached the same conclusion.[2]

The shipping articles, while containing a covenant "to be obedient to the lawful commands of the master * * * and of their superior officers in everything relating to the vessel," did not contain an explicit agreement not to strike. The covenant to be obedient to the direction of one's superiors is implicit in every normal employment contract. The articles merely made explicit that implicit obligation. The breach of that obligation by the exercise of the right to strike was not ground for terminating the contract of employment. Section 2 (3) of the National Labor Relations Act (29 U. S. C. A., sec. 152 (3)) makes this quite clear. Consequently, the shipping articles did not bar the seamen's right to strike while their vessel was safely moored in an American port, and the breach of the articles involved in the strike did not justify the subsequent discharge of the strikers. It follows that the Board was not in error in directing the reinstatement of the five discharged seamen and of the others who went out on strike on July 25th because of the discriminatory discharge of their fellow seamen.

One further point must be noticed. The Board ordered the Company to reimburse public work relief agencies for sums paid to the five seamen ordered reinstated by them. This was beyond its power. (*Republic Steel Corp.* v. *National Labor Relations Board*, 311 U. S. 7.) The Board's order will accordingly be modified by eliminating this provision.

The order of the National Labor Relations Board is modified as hereinabove indicated and as so modified is affirmed. A decree enforcing it as modified will be entered.

CLARK, *Circuit Judge*, Dissenting.

In my humble judgment the National Labor Relations Board has here been guilty of a second disservice to wise industrial relations. I say second because the United States Supreme Court has already expressed its disagreement with their earlier approval of the so-called "sit-down strike."[1] I cannot, therefore, join my learned brethren in assenting to what I deem to be another mistake. The *Fansteel case* declared a limitation on the National Labor Relations Act. The theory of that limitation has been much discussed. As is often the case in matters of statutory interpretation, there has not been unanimity either as to its basis or its scope.[2] It is clear, however, that the inferior Federal

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[2] Rothschild—The Legal Implications of a Strike by Seamen—45 Yale L. J. 1181, 1199. "None of the penalties imposed by law upon seamen for mutinous conduct or infractions of discipline were intended to apply to a peaceful strike in a port of safety. The law was intended to confirm the master's supreme authority on the high seas when the master, single-handed, must enforce his orders, disobedience to which may lead to his overthrow and imperil the safety of ship, passengers, and cargo. No such dangers are threatened while the ship is moored to the dock in a port of safety. At most, the shipowner suffers a pecuniary loss through the delayed sailing of the vessel—a loss which is a lawful incident to all strikes, which uniformly depend for their effectiveness upon the interruption of production.

Through the statute abolishing imprisonment as a penalty for desertion, which was enacted subsequent to the mutiny statute, seamen leaving a ship cannot be subjected to imprisonment in order to compel them to remain at work. Surely the mere fact that seamen, in the course of a strike, remain on board instead of leaving a ship moored in a port of safety cannot in itself make the difference between guilt or innocence of the crime of mutiny.

Most of the cases discussing the rights of seamen are antiquated by economic developments. But it is implicit even in these cases, decided at a time when the right to organize was denied and a strike by any class of workers was illegal, and when seamen quitting their ship could be imprisoned, that the unseaworthiness of a vessel was a grievance of which the crew might justifiably complain and which, if occasion required, they might properly combine to remedy.

For it is the crew, not the owner of a vessel or even its passengers, which is primarily concerned with the seaworthiness of a vessel and which is in the best position to know whether there has been compliance with the regulations designed to promote safety at sea. But since action by individual members of the crew is ineffectual, collective action is necessary. To deny the right of seamen to take collective action is to destroy a safeguard necessary to supplement even the most vigilant administrative enforcement of the law.

But safety at sea requires more than enforcement of safety regulations. It depends also upon a personnel made efficient not by 'discipline' but by decent working conditions. Such conditions are most effectively secured through the bargaining power of the seamen themselves rather than through legislative or administrative action. It should be self-evident that the right of seamen to organize and to strike where the ship is not thereby imperilled is essential to enforce compliance with statutory regulations and to secure decent working conditions, without which there can be no safety at sea.

The law now acknowledges, and even favors the right to strike as essential to a satisfactory adjustment of industrial conflicts within the framework of a democratic society. Special circumstances of danger may deny seamen that privilege when at sea or in a port of refuge. But there can be no reason of policy, and no support in the doctrines of maritime law, for denial to seamen when in a port of safety of a right freely recognized in other classes of workers."

Sapiro and Frank—Mutiny at the Dock, 27 Cal. L. Rev. 41, 51. "The decisions of a by-gone day would hold that a refusal to obey lawful commands while the ship is docked is an endeavor to make or the making of a revolt. But recognition of the labor union and the right of labor to bargain collectively and to dramatize its demands by means of the strike is now an integral part of the social-industrial world and of the law that reflects the important changes in that world.

The doctrines of Justice Story must be changed to make room for the expansions of understanding and social rights. When the crew of a ship, safely moored to a dock, strikes and refuses to work, in the effort to gain certain legitimate ends, for themselves and for others of their class, such action is no longer mutinous but is only a lawful incident in the exercise of the right of collective bargaining."

[1] *N. L. R. B.* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240.

[2] Labor Law—Legal Status of Sit-down Strike—Legal and Equitable Remedies, 35 Michigan Law Review, 1330 (comment); The Fansteel Decision: Protection of Striking Workers Under the Wagner Act, 33 Illinois Law Review, 187 (comment); Labor Law—National Labor Relations Board—Effect of Employees' Misconduct on Right to Reinstate-

Courts have been directed to except from the reinstatement requirements of the Act certain types of misbehaving employees. In the *Republic case* this Court had occasion to attempt some classification of those types.[3] The attempt was successful insofar as success is implied in denial of certiorari.[4]

In the case at bar we are required to pass upon employee conduct in a special environment. That environment is the sea and the conduct is that of those who go down thereto in ships. The behavior of the seamen ordered reinstated by the Board consisted of a collective cessation from work on a ship moored to a dock in a foreign[5] port. On land such a cessation from work comes within the right to strike. That right has happily been an accepted part of our jurisprudence for many years.[6] That does not and plainly cannot mean the right is absolute.[7] Mr. Justice Brandeis pointed that out some years ago, saying:

"The right to carry on business—be it called liberty or property—has value. To interfere with this right without just cause is unlawful. The fact that the injury was inflicted by a strike is sometimes a justification. But a strike may be illegal because of its purpose, however orderly the manner in which it is conducted. * * * Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike. Compare *Aikens* v. *Wisconsin*, 195 U. S. 194, 204–5." *Dorchy* v. *Kansas*, 272 U. S. 306, 311.

Our purpose here does not require any catalogue of exceptions. Courts and individual judges are not always in accord.[8] They search for an adjustment of the conflicting interests of both parties to the economic conflict in relation to their background as members of a community. By the same token, the test is not one of convenience. The weapon of the strike depends upon inconvenience to the employer and sometimes even to innocent third parties for its efficacy.[9] Its sanction in that aspect is one of the penalties of the warfare conception of labor relations. So the timing can be selected in terms of strategy rather than in terms of effective production.

One limitation of time has been recognized both by the cases and by statute.[10] That time is the time of another war, the war between nations rather than strife over what is a just proportionate share of the profits of production. It is dangerous for a country engaged in its own defense to accord to workers the right to impose upon its need to avoid the fatal "too late and too little." So it is dangerous for a community to accede to a timing which goes beyond inconvenience into peril. This is the philosophy expressed by that great Massachusetts lawyer and defender of the oppressed, Moorfield Storey, in his well-known article, The Right to Strike, above cited. Mr. Storey says:

ment, 38 Columbia Law Review, 1507, 1508 (note); Hart and Pritchard, The Fansteel Case; Employee Misconduct and the Remedial Powers of the National Labor Relations Board, 52 Harvard Law Review, 1275; Labor Law—National Labor Relations Act—Employee Misconduct as Barring Relief, 37 Michigan Law Review, 1256 (comment); Employee Misconduct Under the Wagner Act: Developments Since the Fansteel Case, 39 Columbia Law Review, 1369 (note); cf. Weisiger, Reinstatement of Sit-down Strikers, 23 Minnesota Law Review, 30.

[3] *Republic Steel Co p.* v. *N. L. R. B.*, 107 F. (2d) 472.

[4] *Republic Steel Corp.* v. *N. L. R. B.*, 309 U. S. 684.

[5] As contrasted with home—the port being Houston, Texas.

[6] Wright, Criminal Conspiracies and Agreements, § 12, p. 35; Martin, The Modern Law of Labor Unions, § 30 General Right of Workmen to Strike; Oakes, Organized Labor and Industrial Conflicts, § 312, The Right to Strike—in General; Storey, The Right to Strike, 32 Yale Law Journal, 99; Mason, The Right to Strike, 77 University of Pennsylvania Law Review, 52; Labor Union—Right to Strike—Unlawful Interference, 9 Boston University Law Review, 280 (comment); Nelles, The First American Labor Case, 41 Yale Law Journal, 165.

[7] What right is? one might reflect. In discussing that very precious right, that of free expression, I quoted Mr. Lippmann:

"There are, so far as I can discover, no absolutists of liberty; I can recall no doctrine of liberty which under the acid test does not become contingent upon some other ideal. * * * For what every theorist of liberty has meant is that certain types of behaviour and classes of opinion better regulated should be somewhat differently regulated in the future."

124 Atlantic Monthly, 616, quoted in *Committee for Industrial Organization* v. *Hague*, 25 F. Supp. 127, 131.

[8] Oakes, Organized Labor and Industrial Conflicts, § 313, Where Striking Involves Breach of Contract, § 314, Other Limitations on Right to Strike; Lowry, Strikes and the Law, 21 Columbia Law Review, 783; Sayre, Labor and the Courts, 39 Yale Law Journal, 682; Eskin, The Legality of "Peaceful Coercion" in Labor Disputes, 85 University of Pennsylvania Law Review, 456.

[9] Frankfurter and Greene, The Labor Injunction, Chapter I, The Allowable Area of Economic Conflict.

[10] Right to Strike in War Time, 32 Harvard Law Review, 837 (note); Injunction: Coal Strike Enjoined as Violation of the Lever Act, 5 Cornell Law Quarterly, 184 (note); cf. Chafee, The Progress of the Law, 1919–1920, 34 Harvard Law Review, 388, 400, et seq.

"* * * Therefore the right of the individual to leave his work must be subject to the *paramount right* of the public. The engineer who is running a train from one great centre to another can no more stop in the middle of his journey in some desolate place and tell his passengers he will not bo on unless they pay him a considerable sum of money than a sailor aboard ship can mutiny to obtain some advantage to himself at the expense of the voyage. The principle admits no distinction. The people through their legislatures can and should insist that labor disputes shall be decided by judicial tribunals and not by civil war, and that we shall not all live subject to the danger of such war whenever labor leaders choose to bring it on." Storey The Right to Strike, 32 Yale Law Journal 99, 105. [Italics mine.]

It is the philosophy also of the Wicks Bill[11] forbidding the abandonment of public conveyances, passed recently by the New York Legislature. Upon his approval thereof, another great counselor of the downtrodden, Governor Lehman of New York stated that "no one with any common sense would interpret this Act as a denial of the right to strike." As a matter of fact I had always thought that was the philosophy of the labor movement itself. Certainly one remembers the return of engines to the roundhouse and the careful manning of pumps in the mines.

Should that philosophy be adjudged part of the Natioanl Labor Relations Act and so those who disregard it be excepted from the Act's benefits? I think it should. And to so decide does not, in my belief, require me to differ with my brethren as to the present incidence of the crime of mutiny. Undoubtedly their view that Captain Bligh has been dead a long time finds current acceptance. I am pleased to note they cite some of the legal periodicals which are this writers favorite pabulum. Let me add four more to their two.[12] I do not think the test is mutiny vel non. Such a holding leans too heavily on the felony-misdemeanor distinction of the land cases.[13]

It is true that only inconvenience and not danger may result from a particular cessation at the dock in a foreign port. To bottom a general whitewash upon that fact overlooks, in my opinion, the very essence of maritime traffic. Such essence, here, as in the air, is the "happy landing", the safe return of the vessel from its voyage. It may be that during the course of its journey a ship is in positions where its security is unaffected by the idleness of its crew. Some qualms are detectable by the narrowness of the majority's ruling.[14] The difficulty seems to me more fundamental. The Board and this Court entrust the estimation of that security to the persons most likely to be biased. Shipwrecked passengers will take little satisfaction in the sailors' equivalent of the common and tragic, "didn't know it was loaded". Labor unions have been solicitous in their advocacy of full-crew laws. Maritime unions argue for the extension of maintenance and care of seamen beyond the voyage. It is not inconsistent to break the care of passengers during the voyage and to suggest no crews at all? One of the authors above cited puts this argument in slightly different fashion. He says:

"To advocate strikes on board a ship at its pier merely on the basis that, in such circumstances, the safety of lives and cargo is not endangered, is to take a short-sighted point of view. No doubt, while a vessel is in port, the immediate security of all concerned is not greatly jeopardized by the crew's refusal to do its duty. But it is not alone the immediate safety or the present security which must be considered. There is an ultimate safety which must be protected. For this there must be discipline at all times, whether the ship be at sea or tied to shore in the safest of harbors. A master who cannot control his crew in port is not likely to be able to control it at sea. To allow the seamen to resist lawful commands in one place is but to encourage similar resistance elsewhere." Sit-down Strikes on Shipboard, 23 Cornell Law Quarterly 302, 306–307 (note).

To stop work on land just after a large order is received or to refuse to sail a ship which is away from her home port undoubtedly gives additional economic leverage. Inconvenience to consumers is one thing, danger to passengers

[11] P. L. (N. Y.).

[12] Sit-down Strike on Shipboard, 23 Cornell Law Quarterly, 302, 305, 306 (note); Seamen—Mutiny—Sit-down Strikes, 18 Oregon Law Review, 128, 134 (note); S. S. Algic, I National Lawyers Guild Quarterly, 144, 148; Labor Law—Right of Seamen to Strike, 37 Columbia Law Review, 1204 (note).

[13] Employee Misconduct Under the Wagner Act: Developments Since the Fansteel Case, 39 Columbia Review, 1360 (note).

[14] Would it be the same, for instance, if one instead of two hawsers were used?

is quite another. If the National Labor Relations Act may be used, as the Supreme Court has held, to deter employee misbehavior, the writer of this dissent can think of no better example or more useful occasion.

A true copy:

Teste:

Clerk of the United States Circuit Court of Appeals for the Third Circuit.

ROBERTSON v. BALDWIN [1]

STATEMENT OF THE CASE

Appeal From the District Court of the United States for the Northern District of California

No. 334. Argued December 15, 1896—Decided January 25, 1897

Section 4598 of the Revised Statutes is not unconstitutional by reason of its authorizing justices of the peace to issue warrants to apprehend deserting seamen, and deliver them up to the master of their vessel.

The judicial power of the United States is defined by the Constitution, and does not prevent Congress from authorizing state officers to take affidavits, to arrest and commit for trial offenders against the laws of the United States, to naturalize aliens, and to perform such other duties as may be regarded as incidental to the judicial power, rather than a part of it.

Sections 4598 and 4599, insofar as they require seamen to carry out the contracts contained in their shipping articles, are not in conflict with the Thirteenth Amendment forbidding slavery and involuntary servitude; and it cannot be open to doubt that the provision against involuntary servitude was never intended to apply to such contracts.

The contract of a sailor has always been treated as an exceptional one, and involving to a certain extent the surrender of his personal liberty during the life of the contract.

This was an appeal from a judgment of the District Court for the Northern District of California, rendered August 5, 1895, dismissing a writ of habeas corpus issued upon the petition of Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen.

The petition set forth, in substance, that the petitioners were unlawfully restrained of their liberty by Barry Baldwin, marshal for the Northern District of California, in the county jail of Alameda County, by virtue of an order of commitment made by a United States commissioner, committing them for trial upon a charge of disobedience of the lawful orders of the master of the American barkantine *Arago;* that such commitment was made without reasonable or probable cause, in this: That at the time of the commission of the alleged offense, petitioners were held on board the *Arago* against their will and by force, having been theretofore placed on board said vessel by the marshal for the District of Oregon under the provisions of Rev. Stat. § 4596, subdivision 1, and §§4598, 4599, the master claiming the right to hold petitioners by virtue of these acts; that §§ 4598 and 4599 are unconstitutional and in violation of Section 1 of Article III of, and of the Fifth Amendment to, the Constitution; that § 4598 was also repealed by Congress on June 7, 1872, 17 Stat. 262, and that the first subdivision of § 4596 is in violation of the Thirteenth Amendment, in that it compels involuntary servitude.

The record was somewhat meager, but it sufficiently appeared that the petitioners had shipped on board the *Arago* at San Francisco for a voyage to Knappton in the State of Washington; thence to Valparaiso; and thence to such other foreign ports as the master might direct, and return to a port of discharge in the United States; that they had each signed shipping articles to perform the duties of seamen during the course of the voyage; but, becoming dissatisfied with their employment, they left the vessel at Astoria, in the State of Oregon, and were subsequently arrested under the provisions of Rev. Stat. §§ 4596 to 4599, taken before a justice of the peace, and by him committed to jail until the *Arago* was ready for sea (some sixteen days), when they were taken from the jail by the marshal and placed on board the *Arago* against their will; that they refused to "turn to" in obedience to the orders of the master, were arrested at San Francisco, charged with refusing to work in violation of

[1] The docket title of this case is *Robert Robertson, P. H. Olsen, John Bradley, and Morris Hansen v. The United States and Barry Baldwin, individually and as marshal of the United States in and for the Northern District of California.*

Rev. Stat. § 4596; were subsequently examined before a commissioner of the Circuit Court, and by him held to answer such charge before the District Court for the Northern District of California.

Shortly thereafter they sued out this writ of habaes corpus, which, upon a hearing before the District Court, was dismissed. and an order made remanding the prisoners to the custody of the marshal.

OPINION OF THE COURT

Whereupon petitioners appealed to this court.

Mr. Jackson H. Ralston for appellants. *Mr. James G. Maguire* and *Mr. H. W. Hutton* were with him on the brief.

Mr. Solicitor General for appellees.

Mr. Justice Brown delivered the opinion of the court.

Upon what ground the court below dismissed the writ, and remanded the petitioners, does not appear, but the record raises two questions of some importance. First, as to the constitutionality of Rev. Stat. §§ 4598 and 4599, insofar as they confer jurisdiction upon justices of the peace to apprehend deserting seamen, and return them to their vessel; Second, as to the conflict of the same sections and also § 4596 with the Thirteenth Amendment to the Constitution, abolishing slavery and involuntary servitude.

Section 4598, which was taken from § 7 of the act of July 20, 1790, c. 29, 1 Stat. 131, 134, reads as follows:

"SEC. 4598. If any seaman who shall have signed a contract to perform a voyage shall, at any port or place, desert, or shall absent himself from such vessel, without leave of the master, or officer commanding in the absence of the master, it shall be lawul for any justice of the peace within the United States, upon the complaint of the master, to issue his warrant to apprehend such deserter, and bring him before such justice; and, if it then appears that he has signed a contract within the intent and meaning of this title, and that the voyage agreed for is not finished, or altered, or the contract otherwise dissolved, and that such seaman has deserted the vessel, or absented himself without leave, the justice shall commit him to the house of correction or common jail of the city, town or place, to remain there until the vessel shall be ready to proceed on her voyage, or till the master shall require his discharge, and then to be delivered to the master, he paying all the cost of such commitment, and deducting the same out of the wages due to such seamen."

SEC. 4599, which was taken from § 53 of the Shipping Commissioners' Act of June 7, 1872, c. 322, 17 Stat. 262, 274, authorizes the apprehension of deserting seamen, with or without the assistance of the local public officers or constables, and without a warrant, and their conveyance before any court of justice or magistrate of the State to be dealt with according to law.

Sec. 4596, which is also taken from the same act, provides punishment by imprisonment for desertion, refusal to join the vessel, or absence without leave.

1. The first proposition, that Congress has no authority under the Constitution to vest judicial power in the courts or judicial officers of the several States, originated in an observation of Mr. Justice Story in *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 330, to the effect that "Congress cannot vest any portion of the judicial power of the United States, except in courts ordained and established by itself." This was repeated in *Houston* v. *Moore*, 5 Wheat. 1, 27; and the same general doctrine has received the approval of the courts of several of the States. *United States* v. *Lathrop*, 17 Johns. 4; *Ely* v. *Peck*, 7 Connecticut 239; *United States* v. *Campbell*, 6 Hall's Law Jour. 113 (Ohio Com. Pleas). These were all actions for penalties, however, wherein the courts held to the familiar doctrine that the courts of one sovereignty will not enforce the penal laws of another. *Huntington* v. *Attrill*, 146 U. S. 657, 672. In *Commonwealth* v. *Feely*, 1 Va. Cases, 321, it was held by the General Court of Virginia in 1813 that the state courts could not take jurisdiction of an indictment for a crime committed against an act of Congress.

In *Ex parte Knowles*, 5 California, 300, it was also held that Congress had no power to confer jurisdiction upon the courts of a State to naturalize aliens, although, if such power be recognized by the legislature of a State, it may be exercised by the courts of such State of competent jurisdiction.

In *State* v. *Rutter*, 12 Niles' Register, 115, 231, it was held in 1817 by Judges Bland and Hanson of Maryland that Congress had no power to authorize

justices of the peace to issue warrants for the apprehension of offenders against the laws of the United States. A directly contrary view, however, was taken by Judges Cheves of South Carolina in *Ex parte Rhodes*, 12 Niles' Reg. 264.

The general principle announced by these cases is derived from the third article of the Constitution, the first section of which declares that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish," the judges of which courts "shall hold their offices during good behavior," etc.; and by the second section, "the judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State or the citizens thereof, and foreign States, citizens, or subjects."

The better opinion is that the second section was intended as a constitutional definition of the judicial power, *Chisholm* v. *Georgia*, 2 Dall. 419, 475, which the Constitution intended to confine to courts created by Congress; in other words, that such power extends only to the trial and determination of "cases" in courts of record, and that Congress is still at liberty to authorize the judicial officers of the several States to exercise such power as is ordinarily given to officers of courts not of record; such, for instance, as the power to take affidavits, to arrest and commit for trial offenders against the laws of the United States, to naturalize aliens, and to perform such other duties as may be regarded as incidental to the judicial power rather than a part of the judicial power itself. This was the view taken by the Supreme Court of Alabama in *Ex parte Gist*, 26 Alabama, 156, wherein the authority of justices of the peace and other such officers to arrest and commit for a violation of the criminal law of the United States was held to be no part of the judicial power within the third article of the Constitution. And in the case of *Prigg* v. *Pennsylvania*, 16 Pet. 539, it was said that, as to the authority conferred on State magistrates to arrest fugitive slaves and deliver them to their owners, under the act of February 12, 1793, while a difference of opinion existed, and might still exist upon this point in different States, whether State magistrates were bound to act under it, no doubt was entertained by this court and State magistrates might, if they chose, exercise the authority, unless prohibited by State legislation. See also *Moore* v. *Illinois*, 14 How. 13; *In re Kaine*, 14 How. 103.

We think the power of justices of the peace to arrest deserting seamen and deliver them on board their vessel is not within the definition of the "judicial power" as defined by the Constitution, and may be lawfully conferred upon state officers. That the authority is a most convenient one to entrust to such officers cannot be denied, as seamen frequently leave their vessels in small places, where there are no Federal judicial officers, and where a justice of the peace may usually be found, with authority to issue warrants under the state laws.

2. The question whether sections 4598 and 4599 conflict with the Thirteenth Amendment, forbidding slavery and involuntary servitude, depends upon the construction to be given to the term "involuntary servitude." Does the epithet "involuntary" attach to the word "servitude" continuously, and make illegal any service which becomes involuntary at any time during its existence; or does it attach only at the inception of the servitude, and characterize it as unlawful because unlawfully entered into? If the former be the true construction, then no one, not even a soldier, sailor, or apprentice, can surrender his liberty, even for a day; and the soldier may desert his regiment upon the event of battle, or the sailor abandon his ship at any intermediate port or landing, or even in a storm at sea, provided only he can find means of escaping to another vessel. If the latter, then an individual may, for a valuable consideration, contract for the surrender of his personal liberty for a definite time and for a recognized purpose, and subordinate his going and coming to the will of another during the continuance of the contract; not that all such contracts would be lawful, but that a servitude which was knowingly and willingly entered into could not be termed involuntary. Thus, if one should agree, for a yearly wage, to serve another in a particular capacity during his life, and never to leave his estate without his consent, the

contract might not be enforceable for the want of a legal remedy, or might be void upon grounds of public policy, but the servitude could not be properly termed "involuntary." Such agreements for a limited personal servitude at one time were very common in England, and by statute of June 17, 1823, 4 Geo. IV, c. 34, § 3, it was enacted that if any servant in husbandry, or any artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, laborer, or other person, should contract to serve another for a definite time, and should desert such service during the term of the contract, he was made liable to a criminal punishment. The breach of a contract for personal service has not, however, been recognized in this country as involving a liability to criminal punishment, except in the cases of soldiers, sailors, and possibly some others, nor would public opinion tolerate a statute to that effect.

But we are also of opinion that, even if the contract of a seaman could be considered within the letter of the Thirteenth Amendment, it is not within its spirit, a case of involuntary servitude. The law is perfectly well settled that the first ten amendments to the Constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors, and which had from time immemorial been subject to certain well-recognized exceptions arising from the necessities of the case. In incorporating these principles into the fundamental law there was no intention of disregarding the exceptions, which continued to be recognized as if they had been formally expressed. Thus, the freedom of speech and of the press (art. 1) does not permit the publication of libels, blasphemous or indecent articles, or other publications injurious to public morals or private reputation; the right of the people to keep and bear arms (art. 2) is not infringed by laws prohibiting the carrying of concealed weapons; the provision that no person shall be twice put in jeopardy (art. 5) does not prevent a second trial, if upon the first trial the jury failed to agree, or if the verdict was set aside upon the defendant's motion. (*United States* v. *Ball*, 163 U. S. 662, 672); nor does the provision of the same article that no one shall be a witness against himself impair his obligation to testify, if a prosecution against him be barred by the lapse of time, a pardon, or by statutory enactment (*Brown* v. *Walker*, 161 U. S. 591, and cases cited). Nor does the provision that an accused person shall be confronted with the witnesses against him prevent the admission of dying declarations or the depositions of witnesses who have died since the former trial.

The prohibition of slavery, in the Thirteenth Amendment, is well known to have been adopted with reference to a state of affairs which had existed in certain States of the Union since the foundation of the Government, while the addition of the words "involuntary servitude" were said in the *Slaughterhouse cases* (16 Wall. 36), to have been intended to cover the system of Mexican peonage and the Chinese coolie trade, the practical operation of which might have been a revival of the institution of slavery under a different and less offensive name. It is clear, however, that the amendment was not intended to introduce any novel doctrine with respect to certain descriptions of service which have always been treated as exceptional; such as military and naval enlistments, or to disturb the right of parents and guardians to the custody of their minor children or wards. The amendment, however, makes no distinction between a public and a private service. To say that persons engaged in a public service are not within the amendment is to admit that there are exceptions to its general language, and the further question is at once presented, where shall the line be drawn? We know of no better answer to make than to say that services which have from time immemorial been treated as exceptional shall not be regarded as within its purview.

From the earliest historical period the contract of the sailor has been treated as an exceptional one, and involving, to a certain extent, the surrender of his personal liberty during the life of the contract. Indeed, the business of navigation could scarcely be carried on without some guaranty, beyond the ordinary civil remedies upon contract, that the sailor will not desert the ship at a critical moment, or leave her at some place where seamen are impossible to be obtained—as Molloy forcibly expresses it, "to rot in her neglected brine." Such desertion might involve a long delay of the vessel while the master is seeking another crew, an abandonment of the voyage, and, in some cases, the safety of the ship itself. Hence, the laws of nearly all maritime nations have made provision for securing the personal attendance of the crew on board, and for their criminal punishment for desertion, or absence without leave during the life of the shipping articles.

Even by the maritime law of the ancient Rhodians, which is supposed to antedate the birth of Christ by about 900 years, according to Pardessus, (Lois Maritimes, vol. 1, page 250), if the master or the sailors absented themselves by night, and the vessel were lost or damaged, they were bound to respond in the amount of the loss.

In the compilation of maritime laws, known as the Consulate of the Sea, it was also provided that a sailor should not go ashore without permission, upon the penalty of being obliged to pay any damage occasioned by his absence, and, in default of his being able to respond, of being thrust in prison until he had paid all such damage. Chapters 121, 124; 2 Pardessus, 146, 147, 148.

A like provision is found in the Rules of Oleron, promulgated in the reign of Henry III, by which, Art. V, the seamen were forbidden to leave the ship without the master's consent. "If they do and by that means she happens to be lost or damnified, they shall be answerable for the damage." 1 Pet. Ad'my, xi. A similar prohibition is found in article seventeen of the laws of Wisbuy. 1 Pet. Ad. lxxiii.

The laws of the towns belonging to the Hanseatic League, first enacted and promulgated in 1597, were still more explicit and severe. No seaman might go ashore without the consent of the master or other officer, and if he remained longer than the time allowed, was condemned to pay a fine or suffer an imprisonment (Arts. 22 and 23); and by article forty if a seaman went ashore without leave, and the ship happened to receive any damage, "he shall be kept in prison upon bread and water for one year," and if any seaman died or perished for the want of the assistance of the absent seaman, the latter was subject to corporal punishment; and, by article forty-three, "if an officer or seaman quits a ship and conceals himself; if afterwards he is apprehended, he shall be delivered up to justice to be punished; he shall be stigmatized in the face with the first letter of the name of the town to which he belongs." 1 Pet. Ad. cii.

By the Marine Ordinance of Louis XIV, which was in existence at the time the Constitution was adopted (Title Third, Art. III), "if a seaman leaves a master without a discharge in writing before the voyage is begun, he may be taken up and imprisoned wherever he can be found, and compelled to restore what he has received, and serve out the time for which he had engaged himself for nothing; and if he leaves the ship after the voyage is begun, he may be punished corporally." Art. V; "After the ship is laded, the seamen shall not go ashore without leave from the master, under pain of five livres for the first fault; and may be punished corporally if they commit a second."

The present commercial code of France, however, makes no express provision upon the subject; but by the general mercantile law of Germany, Art. 532, "the master can cause any seaman, who, after having been engaged, neglects to enter upon or continue to do his duties, to be forcibly compelled to perform the same."

By the Dutch code, Art. 402, "the master, or his representative, can call in the public force against those who refuse to come on board, who absent themselves from the ship without leave, and refuse to perform to the end of the service for which they were engaged."

Nearly all of the ancient commercial codes either make provision for payment of damages by seamen who absent themselves from their ships without leave, or for their imprisonment, or forcible conveyance on board. Some of the modern commercial codes of Eurpe and South America make similar provisions. (Argentine Code, Art. 1154.) Others, including the French and Spanish codes, are silent upon the subject.

Turning now to the country from which we have inherited most immediately our maritime laws and customs, we find that Malynes, the earliest English writer upon the Law Merchant, who wrote in 1622, says in his *Lex Mercatoria* (vol. I, chap. 23), that "mariners in a strange port, should not leave the ship without the master's license, or fastening her with four ropes, or else the loss falls upon them * * *. In a strange country, the one half of the company, at least, ought to remain on shipboard, and the rest who go on land should keep sobriety and abstain from suspected places, or else should be punished in body and purse; like as he who absents himself when the ship is ready to sail. Yea, if he give out himself worthier than he is in his calling, he shall lose his hire; half to the admiral, and the other half to the master." Molloy, one of the most satisfactory of early English writers upon the subject, states that if seamen depart from a ship without leave or license of the master, and any disaster

happens, they must answer, quoting Art. V of the Rules of Oleron in support of his proposition.

There appears to have been no legislation directly upon the subject until 1729, when the act of 2 Geo. II, c. 36, was enacted "for the better regulation and government of seamen in the merchants' service." This act not only provided for the forfeiture of wages in case of desertion, but for the apprehension of seamen deserting or absenting themselves, upon warrants to be issued by justices of the peace, and, in case of their refusal, to proceed upon the voyage, for their committal to the house of correction at hard labor. Indeed, this seems to have furnished a model upon which the act of Congress of July 20, 1790 (1 Stat. 131), for the government and regulation of seamen in the merchants' service, was constructed. The provisions of this act were substantially repeated by the act of 1791 (31 Geo. III, c. 39), and were subsequently added to and amended by acts of 5 & 6 Wm. IV, c. 19, and 7 & 8 Victoria, c. 112.

The modern law of England is full and explicit upon the duties and responsibilities of seamen. By the Merchants' Shipping Act of 1854, 17 & 18 Victoria, c. 104, section 243, a seaman guilty of desertion might be summarily punished by imprisonment, by forfeiture of his clothes and effects, and all or any part of his wages. Similar punishment was meted out to him for neglecting or refusing to join his ship, or to proceed to sea, or for absence without leave at any time. By section 246, "whenever, either at the commencement or during the progress of any voyage, any seaman or apprentice neglects, or refuses to join, or deserts from or refuses to proceed to sea in any ship in which he is duly engaged to serve," the master was authorized to call upon the police officers or constables to apprehend him without warrant and take him before a magistrate who, by article 247, was authorized to order him to be conveyed on board for the purpose of proceeding on the voyage.

The provision for imprisonment for desertion seems to have been repealed by the Merchants' Seamen (Payment of Wages and Rating) Act of 1880, 43 & 44 Vict., c. 16; but the tenth section of that act retained the provision authorizing the master to call upon the police officers or constables to convey deserting seamen on board their vessels.

This act, however, appears to have been found too lenient, since, in 1894, the whole subject was reconsidered and covered in the new Merchants' Shipping Act, 57 & 58 Vict., c. 60, of 748 sections, section 221 of which provides not only for the forfeiture of wages in case of desertion, but for imprisonment with or without hard labor, except in cases arising in the United Kingdom. The provision for the arrest of the deserting seaman, and his conveyance on board the ship, is however, retained both within and without the kingdom, ss. 222, 223. This is believed to be the latest legislation on the subject in England.

The earliest American legislation, which we have been able to find, is an act of the Colonial General Court of Massachusetts, passed about 1668, wherein it was enacted that any mariner who departs and leaves a voyage upon which he has entered, shall forfeit all his wages, and shall be further punished by imprisonment or otherwise, as the case may be circumstanced; and if he shall have received any considerable part of his wages, and shall run away, he shall be pursued as a disobedient runaway servant. Mass. Col. Laws (ed. 1889) 251, 256.

The provision of Rev. Stat. s. 4598, under which these proceedings were taken, was first enacted by Congress in 1790. 1 Stat. 131, s. 7. This act provided for the apprehension of deserters and their delivery on board the vessel, but apparently made no provision for imprisonment as a punishment for desertion; but by the Shipping Commissioners' Act of 1872, c. 322, 17 Stat. 243, 273, s. 51, now incorporated into the Revised Statutes as section 4596, the court is authorized to add to forfeiture of wages for desertion imprisonment for a period of not more than three months, and for absence without leave imprisonment for not more than one month. In this act and the amendments thereto very careful provisions are made for the protection of seamen against the frauds and cruelty of masters, the devices of boarding-house keepers, and, so far as possible, against the consequences of their own ignorance and improvidence. At the same time discipline is more stringently enforced by additional punishments for desertion, absence without leave, disobedience, insubordination, and barratry. Indeed, seamen are treated by Congress as well as by the Parliament of Great Britain, as deficient in that full and intelligent responsibility for their acts which is accredited to ordinary adults, and as needing the protection of the law in the same sense which minors and wards are entitled to the protection of their parents and guardians: "*quemadmodum pater in filios, magister in discipulos,*

dominus in servos vel familiares." The ancient characterization of seamen as "wards of admiralty" is even more accurate now than it was formerly.

In the face of this legislation upon the subject of desertion and absence without leave, which was in force in this country for more than sixty years before the Thirteenth Amendment was adopted, and similar legislation abroad from time immemorial, it cannot be open to doubt that the provision against involuntary servitude was never intended to apply to their contracts.

The judgment of the court below is, therefore, affirmed.

DISSENTING OPINION: HARLAN, J.

Mr. JUSTICE HARLAN dissenting.

The appellants shipped on the American barkentine *Arago*, having previously signed articles whereby they undertook to perform the duties of seamen during a voyage of that vessel from San Francisco (quoting from the record "to Knappton, State of Washington, and thence to Valparaiso, and thence to such other foreign ports as the master may direct, and return to a port of discharge in the United States." The vessel was engaged in a purely private business.

As stated in the opinion of the court, the appellants left the vessel at Astoria, Oregon, without the consent of the master, having become dissatisfied with their employment. The grounds of such dissatisfaction are not stated.

Upon the application of the master, a justice of the peace at Astoria, Oregon, proceeding under sections 4596 to 4599 of the Revised Statutes of the United States, issued a warrant for the arrest of the appellants. They were seized, somewhat as runaway slaves were in the days of slavery, and committed to jail without bail, "until the *Arago* was ready for sea." After remaining in jail some sixteen days, they were taken by the marshal and placed on board the *Arago* against their will. While on board they refused to "turn to" or to work in obedience to the orders of the master. Upon the arrival of the barkentine at San Francisco they were arrested for having refused to work on the vessel, and committed for trial upon that charge.

If the placing of the appellants on board the *Arago* at Astoria against their will was illegal, then their refusal to work while thus forcibly held on the vessel could not be a criminal offense, and their detention and subsequent arrest for refusing to work while the vessel was going from Astoria to San Francisco were without authority of law. The question therefore is whether the appellants, having left the vessel at Astoria, no matter for what cause, could lawfully be required against their will to return to it, and to render personal services for the master.

The government justifies the proceedings taken against the appellants at Astoria by sections 4596, 4598, and 4599 of the Revised Statutes of the United States.

By section 4596 it is provided:

"SEC. 4596. Whenever any seaman who has been lawfully engaged, or any apprentice to the sea service, commits any of the following offences, he shall be punishable as follows: First. For desertion, by imprisonment for not more than three months, and by forfeiture of all or any part of the clothes or effects he leaves on board, and of all or any part of the wages or emoluments which he has then earned. Second. For neglecting and refusing, without reasonable cause, to join his vessel, or to proceed to sea in his vessel, or for absence without leave at any time within twenty-four hours of the vessel sailing from any port, either at the commencement or during the progress of any voyage; or for absence at any time without leave, and without sufficient reason, from his vessel, or from his duty, not amounting to desertion, or not treated as such by the master; by imprisonment for not more than one month, and also, at the discretion of the court, by forfeiture of his wages, of not more than two day's pay, and, for every twenty-four hours of absence, either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute. Third. For quitting the vessel without leave after her arrival at her port of delivery, and before she is placed in security, by forfeiture out of his wages of not more than one month's pay. Fourth. For wilful disobedience to any lawful command, by imprisonment for not more than two months, and also, at the discretion of the court, by forfeiture out of his wages of not more than four days' pay. Fifth. For continued wilful disobedience to lawful commands, or continued wilful neglect of duty, by imprisonment for not more than six months, and also, at the discretion of the court, by forfeiture, for every twenty-four hours' continuance of such disobedience or neglect, either a sum not more than twelve days' pay, or sufficient to defray any expenses which have been properly incurred in hiring a substitute. Sixth. For assaulting any master or mate, by imprisonment for not more than two years. Seventh. For combining with any others of the crew to disobey lawful commands, or to neglect duty, or to impede navigation of the vessel, or the progress of the voyage, by imprisonment for not more than twelve months. * * *

These provisions are brought forward from the act of June 7, 1872, c. 322, s. 51. 17 Stat. 273.

Section 4598 provides:

"SEC. 4598. If any seaman who shall have signed a contract to perform a voyage shall, at any port or place, desert, or shall absent himself from such vessel, without leave of the master, or officer commanding in the absence of the master, it shall be lawful for any justice of the peace within the United States, upon the complaint of the master, to issue his warrant to apprehend such deserter, and bring him before such justice; and if it then appears that he has signed a contract within the intent and meaning of this title, and that the voyage agreed for is not finished, or altered, or the contract otherwise dissolved, and that such seaman has deserted the vessel, or absented himself without leave, the justice shall commit him to the house of correction or common jail of the city, town, or place, to remain there until the vessel shall be ready to proceed on her voyage, or till the master shall require his discharge, and then to be delivered to the master, he paying all the cost of such commitment, and deducting the same out of the wages due to such seamen."

This section is the same as section 7 of the act of July 20, 1790, c. 29. 1 Stat. 134.

By section 4599—which is substantially the same as section 53 of the above act of June 7, 1872—it is provided:

"SEC. 4599. Whenever, either at the commencement of or during any voyage, any seamen or apprentice neglects or refuses to join, or deserts from or refuses to proceed to sea in, any vessel in which he is duly engaged to serve, or is found otherwise absenting himself therefrom without leave, the master or any mate, or the owner or consignee, or shipping commissioner, may, in any place in the United States, with or without the assistance of the local public officers or constables, who are hereby directed to give their assistance if required, and also at any place out of the United States, if and so far as the laws in force at such place will permit, apprehend him without first procuring a warrant; and may thereupon, in any case, and shall in case he so requires and it is practicable, convey him before any court of justice or magistrate of any State, city, town, or county, within the United States, authorized to take cognizance of offences of like degree and kind, to be dealt with according to the provisions of law governing such cases; and may, for the purpose of conveying him before such court or magistrate, detain him in custody for a period not exceeding twenty-four hours, or may, if he does not so require, or if there is no such court at or near the place, at once convey him on board. If such apprehension appears to the court or magistrate before whom the case is brought to have been made on improper or on insufficient grounds, the master, mate, consignee or shipping commissioner who makes the same, or causes the same to be made, shall be liable to a penalty of not more than one hundred dollars; but such penalty, if inflicted, shall be a bar to any action for false imprisonment."

The decision just made proceeds upon the broad ground that one who voluntarily engages to serve upon a private vessel in the capacity of a seaman for a given term, but who, without the consent of the master, leaves the vessel when in port before the stipulated term is ended and refuses to return to it, may be arrested and held in custody until the vessel is ready to proceed on its voyage, and then delivered against his will, and if need be by actual force, on the vessel to the master.

The Thirteenth Amendment of the Constitution of the United States declares that "neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Slavery exists wherever the law recognizes a right of property in a human being; but slavery cannot exist in any form within the United States. The Thirteenth Amendment uprooted slavery as it once existed in this country, and destroyed all of its badges and incidents. It established freedom for all. "By its own unaided force and effect it abolished slavery and established freedom."

The amendment, this court has also said, "is not a mere prohibition of state laws establishing or upholding slavery or involuntary servitude, but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States." *Civil Rights cases*, 109 U. S. 3, 20.

As to involuntary servitude, it may exist in the United States; but it can only exist lawfully as a punishment for crime of which the party shall have been duly convicted. Such is the plain reading of the Constitution. A condition of enforced service, even for a limited period, in the private business of another, is a condition of involuntary servitude.

If it be said that government may make it a criminal offense, punishable by fine or imprisonment or both, for any one to violate his private contract voluntarily made, or to refuse without sufficient reason to perform it—a proposition which cannot, I think, be sustained at this day, in this land of freedom—it would by no means follow that government could, by force applied in advance of due conviction of some crime, compel a freeman to render personal services in respect of the private business of another. The placing of a person, by force, on a vessel about to sail, is putting him in a condition of involuntary servitude, if the purpose is to compel him against his will to give his personal services in the private business in which that vessel is engaged. The personal liberty of individuals it has been well said, "consists in the power of locomotion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law." 1 Bl. c. 1, p. 134.

Can the decision of the court be sustained under the clause of the Constitution granting power to Congress to regulate commerce with foreign nations and among the several States? That power cannot be exerted except with due regard to other provisions of the Constitution, particularly those embodying the fundamental guarantees of life, liberty, and property. While Congress may enact regulations for the conduct of commerce with foreign nations and among the States, and may, perhaps, prescribe punishment for the violation of such regulations, it may not, in so doing, ignore other clauses of the Constitution. For instance, a regulation of commerce cannot be sustained which, in disregard of the express injunctions of the Constitution, imposes a cruel and unusual punishment for its violation, or compels a person to testify in a criminal case against himself, or authorizes him to be put twice in jeopardy of life or limb, or denies to the accused the privilege of being confronted with the witnesses against him, or of being informed of the nature and cause of the accusation against him. And it is equally clear that no regulation of commerce established by Congress can stand if its necessary operation be either to establish slavery, or to create a condition of involuntary servitude forbidden by the Constitution.

It is said that the statute in question is sanctioned by long usage among the nations of the earth, as well as by the above act of July 20, 1790.

In considering the antiquity of regulations that restrain the personal freedom of seamen, the court refers to the laws of the ancient Rhodians, which are supposed to have antedated the Christian era. But those laws, whatever they may have been, were enacted at a time when no account was taken of man as man, when human life and human liberty were regarded as of little value, and when the powers of government were employed to gratify the ambition and the pleasures of despotic rulers rather than promote the welfare of the people.

Attention has been called by the court to the laws enacted by the towns of the Hanseatic League four hundred years ago, by one of which a seaman who went ashore without leave could, in certain contingencies, be kept in prison "upon bread and water for one year," and by another of which an officer or seaman who quit his ship and concealed himself could be apprehended and "stigmatized in the face with the first letter of the name of the town to which he belongs." Why the reference to these enactments of ancient times, enforced by or under governments possessing arbitrary power inconsistent with a state of freedom? Does any one suppose that a regulation of commerce authorizing seamen who quit their ship, without leave, to be imprisoned "upon bread and water for one year," or which required them to be "stigmatized in the face" with the letter of the town or State to which they belonged, would now receive the sanction of any court in the United States?

Reference has also been made to an act of the Colonial General Court of Massachusetts, passed in 1668, declaring that a seaman who left his vessel before its voyage was ended might be pursued as a runaway servant." But the act referred to was passed when slavery was tolerated in Massachusetts with the assent of the government of Great Britain. It antedated the famous Declaration

of Rights, promulgated in 1780, in which Massachusetts declared, among other things that "all men are born free and equal, and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness."

The effect of that Declaration was well illustrated in *Parsons* v. *Trask*, 7 Gray, 473, 478. That case involved the validity of a contract made in a foreign country in 1840 by an adult inhabitant thereof with a citizen of the United States, "to serve him, his executors and assigns" for the term of five years, "during all of which term the said servant her said master, his executors or assigns, faithfully shall serve and that honestly and obediently in all things, as a good and dutiful servant ought to do." It was sought to enforce this contract in Massachusetts. After carefully examining the provisions of the contract, the court said: "As to the nature, then, of the service to be performed, the place where and the person to whom it is to be rendered, and the compensation to be paid, the contract is uncertain and indefinite; indefinite and uncertain, not from any infirmity in the language of the parties, but in its substance and intent. It is, in substance and effect, a contract for servitude, with no limitation but that of time; leaving the master to determine what the service should be and the place where and the person to whom it should be rendered. Such a contract, it is scarcely necessary to say, is against the policy of our institutions and laws. If such a sale of service could be lawfully made for five years, it might, from the same reasons, for ten, and so for the term of one's life. The door would thus be opened for a species of servitude inconsistent with the first and fundamental article of our Declaration of Rights, which, proprio vigore, not only abolished every vestige of slavery then existing in the Commonwealth, but rendered every form of it thereafter legally impossible. That article has always been regarded not simply as the declaration of an abstract principle, but as having the active force and conclusive authority of law." Observing that one who voluntarily subjected himself to the laws of the State must find in them the rule of restraint as well as the rule of action, the court proceeded: "Under this contract the plaintiff had no claim for the labor of the servant for the term of five years, or for any term whatever. She was under no legal obligation to remain in his service. There was no time during which her service was due to the plaintiff, and during which she was kept from such service by the acts of the defendants."

It may be here remarked that the shipping articles signed by the appellants left the term of their service uncertain, and placed no restriction whatever upon the route of the vessel after it left Valparaiso, except that it should ultimately return to some port in the United States. Under the contract of service, it was at the volition of the master to entail service upon these appellants for an indefinite period. So far as the record discloses, it was an accident that the vessel came back to San Francisco when it did. By the shipping articles, the appellants could not quit the vessel until it returned to a port of the United States, and such return depended absolutely upon the will of the master. He had only to land at foreign ports, and keep the vessel away from the United States, in order to prevent the appellants from leaving his service.

Nor, I submit, is any light thrown upon the present question by the history of legislation in Great Britain about seamen. The powers of the British Parliament furnish no test for the powers that may be exercised by the Congress of the United States. Referring to the difficulties confronting the convention of 1787, which framed the present Constitution of the United States, and to the profound differences between the instrument framed by it and what is called the British Constitution, Mr. Bryce, an English writer of high authority, says in his admirable work on the American Commonwealth: "The British Parliament had always been, was then, and remains now, a sovereign and constituent assembly. It can make and unmake any and every law, change the form of government or the succession to the crown, interfere with the course of justice, extinguish the most sacred private rights of the citizen. Between it and the people at large there is no legal distinction, because the whole plenitude of the people's rights and powers resides in it, just as if the whole nation were present within the chamber where it sits. In point of legal theory it is the nation, being the historical successor of the Folk Moot of our Teutonic forefathers. Both practically and legally, it is today the only and the sufficient depository

of the authority of the nation; and is, therefore, within the sphere of law, irresponsible and omnipotent." Vol. 1, p. 32. No such powers have been given to or can be exercised by any legislative body organized under the American system. Absolute, arbitrary power exists nowhere in this free land. The authority for the exercise of power by the Congress of the United States must be found in the Constitution. Whatever it does in excess of the powers granted to it, or in violation of the injunctions of the supreme law of the land, is a nullity, and may be so treated by every person. It would seem, therefore, evident that no aid in the present discussion can be derived from the legislation of Great Britain touching the rights, duties and responsibilities of seamen, employed on British vessels. If the Parliament of Great Britain, Her Britannic Majesty assenting, should establish slavery or involuntary servitude in England, the courts there would not question its authority to do so, and would have no alternative except to sustain legislation of that character. A very short act of Parliament would suffice to destroy all the guarantees of life, liberty and property now enjoyed by Englishmen. "What," Mr. Bryce says, "are called in England constitutional statutes, such as Magna Charta, the Bill of Rights, the Act of Settlement, the Acts of Union with Scotland and Ireland, are merely ordinary laws, which could be repealed by Parliamen at any moment in exactly the same way as it can repeal a highway act or lower the duty on tobacco." Parliament, he further says, "can abolish when it pleases any institution of the country, the Crown, the House of Lords, the Established Church, the House of Commons, Parliament itself." Vol. 1, pp. 237, 238. In this country, the will of the people as expressed in the fundamental law must be the will of courts and legislatures. No court is bound to enforce, nor is any one legally bound to obey, an act of Congress inconsistent with the Constitution. If the Thirteenth Amendment forbids such legislation in reference to seamen as is now under consideration, that is an end of the matter, and it is of no consequence whatever that government in other countries may by the application of force, or by the infliction of fines and imprisonment, compel seamen to continue in the personal service of those whom they may have agreed to serve in private business.

Is the existing statute to be sustained because its essential provisions were embodied in the act of 1790? I think not, and for the reason, if there were no other, that the Thirteenth Amendment imposes restrictions upon the powers of Congress that did not exist when that act was passed. The supreme law of the land now declares that involuntary servitude, except as a punishment for crime of which the party shall have been duly convicted, shall not exist anywhere within the United States.

The only exceptions to the general principles I have referred to, so far as they relate to private business, arise out of statutes respecting apprentices of tender years. But statutes relating to that class rest largely upon the idea that a minor is incapable of having an absolute will of his own before reaching majority. The infant apprentice, having no will in the matter, is to be cared for and protected in such way as, in the judgment of the State, will best subserve the interests both of himself and of the public. An apprentice serving his master pursuant to terms permitted by the law cannot, in any proper sense, be said to be in a condition of involuntary servitude. Upon arriving at his majority, the infant apprentice may repudiate the contract of apprenticeship, if it extends beyond that period. (2 Parsons on Contr. 50.) The word "involuntary" refers, primarily, to persons entitled, in virtue of their age, to act upon their independent judgment when disposing of their time and labor. Will any one say that a person, who has reached his majority, and who had voluntarily agreed, for a valuable consideration, to serve another as an apprentice for an indefinite period, or even for a given number of years, can be compelled, against his will, to remain in the service of the master?

It is said that the grounds upon which the legislation in question rests are the same as those existing in the cases of soldiers and sailors. Not so. The Army and Navy of the United States are engaged in the performance of public, not private, duties. Service in the army or navy of one's country according to the terms of enlistment never implies slavery or involuntary servitude, even where the soldier or sailor is required against his will to respect the terms upon which he voluntarily engaged to serve the public. Involuntary service rendered for the public, pursuant as well to the requirements of a statute as to a previous voluntary engagement, is not, in any legal sense, either slavery or involuntary servitude.

The further suggestion is made that seamen have always been treated by legislation in this country and in England as if they needed the protection of

the law in the same sense that minors and wards need the protection of parents and guardians, and hence have been often described as "wards of admiralty." Some writers say that seamen are in need of the protection of the courts, "because peculiarly exposed to the wiles of sharpers and unable to take care of themselves." (2 Parsons Shipp. & Adm. 32.) Mr. Justice Story in *Harden* v. *Gordon* (2 Mason, 541, 555), said that "every court should watch with jealousy an encroachment upon the rights of seamen, because they are unprotected and need counsel; because they are thoughtless and require indulgence; because they are credulous and complying, and are easily overreached." Mr. Justice Thompson, in the *Brig Cadmus* v. *Matthews* (2 Paine, 229, 240), said: "In considering the obligation of seamen, arising out of their contract in their shipping articles, according to the formula in common use, due weight ought to be given to the character and situation of this class of men. Generally ignorant and improvident, and probably very often signing the shipping articles without knowing what they contain, it is the duty of a court to watch over and protect their rights, and apply very liberal and equitable considerations to the enforcement of their contracts."

In view of these principles, I am unable to understand how the necessity for the protection of seamen against those who take advantage of them can be made the basis of legislation compelling them, against their will, and by force, to render personal service for others engaged in private business. Their supposed helpless condition is thus made the excuse for imposing upon them burdens that could not be imposed upon other classes without depriving them of rights that inhere in personal freedom. The Constitution furnishes no authority for any such distinction between classes of persons in this country. If prior to the adoption of the Thirteenth Amendment the arrest of a seaman and his forcible return under any circumstances to the vessel on which he had engaged to serve could have been authorized by an act of Congress, such deprivation of the liberty of a freeman cannot be justified under the Constitution as it now is. To give any other construction to the Constitution is to say that it is not made for all, and that all men in this land are not free and equal before the law, but that one class may be so far subjected to involuntary servitude as to be compelled by force to render personal services in a purely private business with which the public has no concern whatever.

The court holds that within the meaning of the Constitution the word "involuntary" does not attach to the word "servitude" continuously and make illegal a service which was voluntary at the outset, but became involuntary before the agreed term of service was ended; consequently, "an individual may, for a valuable consideration, contract for the surrender of his personal liberty for a definite time and for a recognized purpose, and subordinate his going and coming to the will of another during the continuance of the contract; not that all such contracts would be lawful, but that a servitude which was knowingly and willingly entered into could not be termed involuntary. "Thus," the court proceeds, "if one should agree, for a yearly wage, to serve another in a particular capacity during his life, and never to leave his estate without his consent, the contract might be void upon grounds of public policy, but the servitude could not be properly termed involuntary. Such agreements for a limited personal servitude at one time were very common in England, and by statute of June 17, 1823 (4 Geo. IV, c. 34), it was enacted that if any servant in husbandry, or any artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, laborer, or other person, should contract to serve another for a definite time, and should desert such service during the term of the contract, he was made liable to a criminal punishment. The breach of a contract for a personal service has not, however, been recognized in this country as involving a liability to criminal punishment, except in the cases of soldiers, sailors and apprentices, and possibly some others, nor would public opinion tolerate a statute to that effect."

It seems to me that these observations rest upon an erroneous view of the constitutional inhibition upon involuntary servitude.

Of the meaning and scope of the constitutional interdict upon slavery, no one can entertain doubt. A contract by which one person agrees to become the slave of another would not be respected in any court, nor could it become the foundation of any claim or right, even if it were entered into with constraint being used upon the person who assumed to surrender his liberty and to become the property of another. But involuntary servitude, no matter when it arises, if it be not the result of punishment for crime of which the party has been duly convicted, is as much forbidden by the Constitution as is slavery. If that condition exists

at the time the authority of the law is invoked to protect one against being forcibly compelled to render personal services for another, the court cannot refuse to act because the party seeking relief had voluntarily agreed to render such services during a given period. The voluntary contracts of individuals for personal services in private business cannot justify the existence anywhere or at any time in this country of a condition of involuntary servitude not imposed as a punishment for crime, any more than contracts creating the relation of master and slave can justify the existence and recognition of a state of slavery anywhere, or with respect to any persons, within the jurisdiction of the United States. The condition of one who contracts to render personal services in connection with the private business of another becomes a condition of involuntary servitude *from the moment he is compelled against his will* to continue in such service. He may be liable in damages for the nonperformance of his agreement, but to require him, against his will, to continue in the personal service of his master is to place him and keep him in a condition of involuntary servitude. It will not do to say that by "immemorial usage" seamen could be held in a condition of involuntary servitude, without having been convicted of crime. The people of the United States, by an amendment of their fundamental law, have solemnly decreed that "except as a punishment for crime, whereof the party shall have been duly convicted," involuntary servitude shall not exist in any form in this country. The adding another exception by interpretation simply, and without amending the Constitution, is, I submit, judicial legislation. It is a very serious matter when a judicial tribunal, by the construction of an act of Congress, defeats the expressed will of the legislative branch of the government. It is a still more serious matter when the clear reading of a constitutional provision relating to the liberty of man is departed from a deference to what is called usage which has existed, for the most part, under monarchical and despotic governments.

In considering this case it is our duty to look at the consequences of any decision that may be rendered. We cannot avoid this duty by saying that it will be time enough to consider supposed cases when they arise. When such supposed cases do arise, those who seek judicial support for extraordinary remedies that encroach upon the liberty of freemen will, of course, refer to the principles announced in previous adjudications, and demand their application to the particular case in hand.

It is, therefore, entirely appropriate to inquire as to the necessary results of the sanction given by this court to the statute here in question. If Congress, under its power to regulate commerce with foreign nations and among the several States, can authorize the arrest of a seaman who engaged to serve upon a private vessel, and compel him by force to return to the vessel and remain during the term for which he engaged, a similar rule may be prescribed as to employes upon railroads and steamboats engaged in commerce among the States. Even if it were conceded—a concession to be made only for argument's sake—that it could be made a criminal offense, punishable by fine or imprisonment or both, for such employes to quit their employment before the expiration of the term for which they agreed to serve, it would not follow that they could be compelled, against their will and in advance of trial and conviction, to continue in such service. But the decision today logically leads to the conclusion that such a power exists in Congress. Again, as the legislatures of the States have all legislative power not prohibited to them, while Congress can only exercise certain enumerated powers for accomplishing specified objects, why may not the States, under the principles this day announced, compel all employes of railroads engaged in domestic commerce, and all domestic servants, and all employes in private establishments, within their respective limits, to remain with their employers during the terms for which they were severally engaged, under the penalty of being arrested by some sheriff or constable, and forcibly returned to the service of their employers? The mere statement of these matters is sufficient to indicate the scope of the decision this day rendered.

The Thirteenth Amendment, although tolerating involuntary servitude only when imposed as a punishment for crime of which the party shall have been duly convicted, has been construed, by the decision just rendered, as if it contained an additional clause expressly excepting from its operation seamen who engage to serve on private vessels. Under this view of the Constitution, we may now look for advertisements, not for runaway servants as in the days of slavery, but for runaway seamen. In former days, overseers could stand with whip in hand over slaves, and force them to perform personal service for their masters. While, with the assent of all, that condition of things has ceased to exist, we can but be reminded of the past when it is adjudged to be consistent with the law of the land for freemen who happen to be seamen to be held in custody that they may be forced to go aboard private vessels and render personal services against their will.

In my judgment the holding of any person in custody, whether in jail or by an officer of the law, against his will, for the purpose of compelling him to render personal service to another in a private business, places the person so held in custody in a condition of involuntary servitude forbidden by the Constitution of the United States; consequently, that the statute as it now is, and under which the appellants were arrested at Astoria and placed against their will on the barkantine *Arago*, is null and void, and their refusal to work on such vessel after being forcibly returned to it could not be made a public offence authorizing their subsequent arrest at San Francisco.

I dissent from the opinion and judgment of the court.

Mr. Justice GRAY was not present at the argument, and took no part in the decision of this case.

Mr. SEEHORN. One of you gentlemen asked Dr. Bloch what our greatest difficulties were. I want to answer that, for fear you will not ask me.

I wish to say that I am thoroughly sold on the soundness of collective bargaining. I have no apologies to make for that feeling. I believe in it; in fact, I believe in it so thoroughly that I do not believe a democracy such as ours can successfully operate without it. I think it is a component part of self-government. The right of men to organize and to bargain is one of the inalienable rights, even though it is not mentioned in the Bill of Rights of the Constitution.

The difficult point I have found, or the most difficult one, is that legally we say we will recognize the policies laid down in title X, which is our act; the National Labor Relations Act; the Railway Labor Act; the Norris-LaGuardia Act; and so on. But the problem that I find is the hesitancy of men to accept the absolute right of those men to be at the conference table. In other words, they might all have their fingers crossed.

One of the difficult problems I have had is in conference. Before we can get down to the merits of the case, there are the usual accusations that this particular representative of this particular organization is wrong or this particular method is all wrong. For the last 20 years on the railroad you have seldom heard that. But in this industry you almost invariably hear it in every conference. In other words, I am convinced that too much of the industry has not honestly accepted the policy of our Government that collective bargaining is right and that these men have an absolute right to be at the conference table to deal in these matters with the employer without any question. When that right is accepted in good faith, then the merits of their controversies can be dealt with and the time not be dissipated in arguing whether the X. Y. Z. organization is better than the A. B. C. or some other organization.

That is one of the most difficult problems I find. In other words, we have not quite got this industry to the point yet where in absolute good faith the principles are accepted.

Senator MEAD. Of course, the steady, wholesome growth of the collective-bargaining idea on the railroads may have resulted from the steady growth of the railroads in every decade since the railroads came into existence, as compared with the maritime industry, which was neglected by the Government, and which had found it difficult to endure the competition that it was up against.

If you read the history of the maritime industry, you will find that we had the supremacy of the seas three times: With the old clipper ships, then during the World War, when necessities forced the Government into the building of ships. We neglected it after the World War, and it became impoverished, and foreign ships carried a great deal of our cargoes.

Just a few years ago the Government, under this administration, went back into the business of putting the American flag on the ships again.

Mr. SEEHORN. That is right, Senator, to a certain extent.

Senator MEAD. The histories of the two industries have been greatly different.

Mr. SEEHORN. This is not the first time we were confronted with that theory. I am not sure that I can agree wholly that that is an element.

Senator MEAD. Then, the railroads had a monopoly on transportation, while the shipping industry was in constant competition with the backward nations and labor relations were almost nil.

Mr. SEEHORN. That is true to a certain extent, but still our shipping was not entirely wiped out at any time. The railroads have been pretty low, as we know, sometimes. We should not, in our analysis of the present-day conditions of the railroad, assume that they have never had any trouble. Some people are beginning to believe that they just grew that way. They forgot that in 1877, 1888, 1894, and 1920 and 1922 there were terrible panics, when men who were running locomotives were cut off the firemen's extra board.

Of course, they had a monopoly on land at one time in transportation, but so did the shipping industry have a monopoly on the seas at one time.

It is true that our Government farmed out, we might say, to other countries, our water transportation. I think it was a mistake, but I think we all recognize that that is water over the dam. What we had left we did not recognize soon enough and did not install in that industry the same sound citizenship principles as we did in the other transportation system.

I am often confronted with this argument: that every transportation man is "broke." You never go into a railroad conference without being told how poor they are and how long they have been that way. When you get into this industry, they say they have been "broke" longer and worse than the railroads. It has dawned on me that here are the two great transportation systems, from a Government standpoint, operating somewhat differently, each arriving at the same place, just 'broke," according to its story. Certainly when we have bad labor policies, they can't blame it on the labor policies. If this maritime labor policy "broke" the maritime industry, the reverse would not break the railroad. So, that is not the answer.

Well, they say that the Government has subsidized the maritime industry. Surely, we poured millions upon millions of dollars into it; but so have we into the railroads. We have been exceedingly liberal with our money in pouring it into each one of these industries. Many people do not think that we have paid a hundred cents on each dollar that we have poured in, but we have done the best we can.

Senator RADCLIFFE. I do not think it is necessary to go into the financing of the railroads.

Mr. SEEHORN. No. The point I want to emphasize is that the peculiarities of this industry—and there are many—warrant a special study by our Government in order to meet the peculiar problems of waterborne commerce; and to do it as honestly and as thoroughly as we have in the railroad industry, in my opinion, will bring about a satisfactory result.

I do not believe you can possibly throw a highly specialized industry into the big pot and expect an over-all agency to pick out the peculiarities and deal with them as they should be dealt with and get good results. They just will not do it.

In fact, we have an illustration. No one has favored the Labor Department more than I have, even before it was created in 1913. We have had a Labor Department here in this over-all approach, but it has never, to my mind, quite centered on this industry as I think it should have done. I think that is one of the answers in the railroad industry: That you met the problems from the railroad standpoint, irrespective of what was being done elsewhere, and attempted to solve them—of course, they are not all solved yet—but had not done it, until this approach was made, for the maritime industry.

Senator MEAD. Perhaps you will say as a result of the enactment of the La Follette Seamen's Act and the Wagner Labor Relations Act, and now this decision of the Supreme Court, that there will be a greater need of conciliation or mediation, while this transition is taking place, which will place the seamen on the same status as the railroad men.

Mr. SEEHORN. That has been the experience in other industries, and I see no reason why there should be an exception here.

Senator MEAD. Do you think that instead of less there ought to be more conciliation or mediation during this period?

Mr. SEEHORN. My experience has been this: Too many people think that when Government and the representatives of labor meet and sign a contract, the work is all done. The truth of the matter is that it is just really starting, because to do a good job of it is almost a constant problem. Men have not yet learned to write their decisions in language that men will not misunderstand. So, it is a constant problem.

We are just now arriving at the point in this industry where sound collective bargaining has been authorized, and all this work of really understanding the problem and understanding each other and settling the problem is just beginning. It will take a lot of work, money, and attention. We cannot afford to assume that it will cure itself or handle itself.

Senator RADCLIFFE. Have you anything further, Mr. Seehorn?

Mr. SEEHORN. No, Mr. Chairman; I thank you.

Senator RADCLIFFE. You will have an opportunity later for rebuttal, if you desire.

Mr. PETERSON. Mr. Chairman, my name is Walter J. Peterson, and I represent the Pacific American Steamship Association. I want to say, Mr. Chairman, that we have here from the west coast Mr. Foisie.

He has to go back this afternoon, so I should like to yield to him to present the views of the Pacific Coast Steamship Association at this time.

Senator RADCLIFFE. We shall be glad to hear you, Mr. Foisie.

STATEMENT OF F. P. FOISIE, PACIFIC AMERICAN STEAMSHIP ASSOCIATION

Mr. FOISIE. My name is F. P. Foisie. I speak for the Pacific American Steamship Association and, through that association, for the following: Shipowners Association of the Pacific Coast, Pacific American Shipowners Association, Los Angeles Steamship Association, Waterfront Employers of Washington, Waterfront Employers of Portland, Waterfront Employers of San Francisco, Waterfront Employers of Southern California, Waterfront Employers of the Pacific Coast.

The nine associations on whose behalf I appear represent practically all of the many employers on the Pacific coast whose activities are covered by the jurisdiction of the Maritime Labor Board, including terminal and stevedore operations. The membership of these associations has over 300 American flag vessels and employ over 23,000 seagoing personnel, together with 15,000 shore-side employees, practically all of whom are members of various labor unions.

All of these associations are unanimous in their opposition to the Maritime Labor Board and urge its discontinuance.

The opposition by the employers on the Pacific coast is significant. Shipowners and waterfront employers are vitally interested in the preservation of labor peace. Friction on the West coast in the past 7 years has brought enormous losses, not only to shipping but to labor and shippers. As a matter of self-interest, the employer groups of the Pacific coast would heartily favor and endorse any project which showed even a remote prospect of bringing industrial peace. The organizations oppose the continuance of this Board because there is no likelihood, in our judgment, that the Maritime Labor Board will help along industrial peace; on the contrary we are convinced that continuation of this Board will be a hindrance.

There are several reasons for our opposition:

First, specialized labor adjustment boards will make for confusion, waste, and ineffectiveness. There is little, if any more basis for a specialized labor adjustment board for shipping than for any other industry. Lumber, coal, steel, communications, construction, shipbuilding, agriculture—these any many other industries require more workers and embraace more employers. Each could quite as readily justify a special labor adjustment board, but it is at least doubtful if either labor or management in any of these industries would welcome a specialized board any more than shipping does. And the bare notion of many boards is enough to discard the idea.

Second, a generalized conciliation service, covering all industry, makes for a better result than many specalized boards. A broad labor adjustment service, such as that provided by the Conciliation Service of the Labor Department, attracts more efficient personnel, more capable leadership, and packs more weight and influence. The personnel and directing authorities of the broad conciliation service also benefit from their broader experience in labor activities throughout the Nation. They are likely to be less biased and more skilled and experienced because of the greater diversity of their contacts and activities. For these reasons the industry places a great deal more confidence in, and reliance upon, the Labor Department's Conciliation Service than it does in the Maritime Labor Board.

Third, duplication of service in attempts to aid in the settlement of disputes brings harm rather than help, as well as being wasteful. Too many cooks spoil the broth quite as much in industry as in the kitchen. It is particularly exasperating in the midst of a labor dispute to face rival governmental agencies seeking credit for a settlement which in fact has been delayed by the very play of competing conciliators.

I know whereof I speak, gentlemen, because I have been in that phase on several occasions.

Fourth, a unified service is clearly called for, under the United States Department of Labor, which has public responsibility for helping to keep the peace in industry. Except for the National Mediation Board for the railroads and until the Maritime Labor Board was created for a temporary period and service, there was only one conciliation service; and there should be only one again.

Fifth, the National Defense Mediation Board will be put in a more effective position to help avert labor disturbance in the vital defense field of shipping if all incipient disturbances are dealt with in an an harmonious way by a single conciliation service, that of the Department of Labor, and grooved up by that service to the defense board early enough to apply a remedy. Shipping may well become the Nation's bottleneck in the national emergency. It should not be subject to the risk of being plugged by competing mediation services.

Finally, the membership of the Maritime Labor Board and our experience during its life have created a distrust which leads us to urge its discontinuance.

Prime need in mediation service is mutual confidence in the impartiality and practical experience of the mediation service by both organized employees and organized employers. This has been lacking, for the employers at least, from the moment the Board was named and has grown steadily worse during the 3 years of our experience with the Maritime Labor Board.

It is exceedingly irksome to an employer to be critical of public servants in responsible positions, and we do so now with reluctance. We have heretofore refrained from criticizing the Board publicly, with a single exception; but the prospects of 2 more years of the Board leads us to choose candor now or hold our peace for the duration.

The Board, to shipping on the Pacific coast—and I can speak for all of them—have for all practical purposes meant that member of the Board who comes from that coast. We have but little to do with the other two members. It is commonly understood and be-

lieved that the Pacific coast member owes his appointment to the influence of Messrs. John L. Lewis and Harry Bridges.

Close and sympathetic relationship is known to have existed for years between the Pacific coast Board member and counsel for the Longshoremen and other marine unions.

And it is a matter of public record that several of the marine unions, notably the Longshoremen's Union, have sought to inject the Maritime Labor Board repeatedly into Pacific coast shipping disputes against the desires of the employers.

Distrust of the Board by shipping is such that every effort is made to avoid contact with its members to the extent that it is legally possible. In self-protection that condition will no doubt continue if the life of the Board is extended.

Although employers may not speak for labor, it seems appropriate to point out that Pacific coast shipping's objection to the Maritime Labor Board is not limited to management but extends to several of the marine unions as well.

The services of the Maritime Labor Board have not been sought by shipping either in the making of labor contracts or maintaining them.

I mention that because we would like it understood that this is not a simple unionism of the employer group without justification from the labor group, as evidence our experiences with the Board. The services of the Maritime Labor Board have not been sought by shipping either in the making of labor contracts or in maintaining them. I should like to digress for a moment to say that all the shipping, all branches of labor on the Pacific coast, and all the employers were organized long before the Maritime Board and quite some time before the Wagner Labor Act saw the light of day, so although our experience with union agreements is rather recent, it antedates the Wagner Act, and the Board has had no influence nor has it made any contribution to the making of collective-bargaining contracts on the Pacific coast.

It is risking public criticism for employers to reject the mediation offers of any legally constituted public body. Requests by labor for Government intervention leave employers practically without justification to decline. And finally, the deep desire to get along somehow and keep ships moving has been controlling. Therefore, shipping on the Pacific coast has been pushed into a number of experiences where the Maritime Labor Board has either been injected by left-wing labor leadership or interjected itself.

The Longshoremen's Union leaders persisted for a year while negotiating a new contract in attempts to displace the Secretary of Labor as the authority to appoint the standing arbitrator.

The Board did succeed for a time in forcing its way into, and the United States Conciliation Service out of, negotiations of ship clerks and water-front employers; an act hardly to be commended as in the public interest.

Gross partisanship for labor and fornenst employers by the Pacific coast member of the Board was publicly revealed during the ship

clerk's strike which tied up the port of San Francisco for 53 days—November 10, 1939, to January 3, 1940.

Governor Olson appointed a commission of citizens whose integrity was not open to question, to find the facts and submit public recommendations. When that commission refused to recommend that the employers yield to the union's demand for arbitration that the selection of monthly ship clerks, the responsible representatives of management, be left in the hands of the union, the Governor publicly repudiated his own citizens' commission. Then followed this telegram from board member Dr. Louis Bloch to Governor Olson's director of industrial relations, who published it:

> The Maritime Labor Board believes that Governor Olson's proposal provided a fair and practical means of settling the present strike of the San Francisco ship clerks. In an effort to settle this dispute, the Board, in accordance with the Merchant Marine Act of 1936, urged arbitration of the issues involved in the dispute.
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> It is, therefore, the position of the Board that the responsibility for the continued tie-up of the port rests upon those who refuse to submit the issues involved to arbitration.

Whereupon the following public response was telegraphed to Chairman Robert W. Bruere by the Employers' Association:

> Yesterday's published telegram from Dr. Bloch replying to inquiry by George Kidwell, Director of Industrial Relations Department of California, as to position of your Board in ship's clerk strike is openly partisan.
>
> You have mediated and performed the last act required by you under the law. Now you have chosen to be partisan and have ceased to mediate. In our judgment the Board has thereby disqualified itself from serving further.

The Board has ceased to serve Pacific coast shipping since.

If one primary reason could be named as the root of labor disturbances which have plagued Pacific coast shipping for the past 7 years, it is the policy, formally adopted and persistently carried out, of job action or contract violation. This is the left-wing philosophy of gaining by quickie-strikes on the job what was not secured at the conference table.

There is not a single word in the record, of public actions at least, of the Maritime Labor Board's efforts to correct this basic obstacle to maritime peace. The need of and opportunity for the Board to exert its public influence and duty to encourage the keeping of contracts once made was repeatedly urged upon the Board by the employers. The law creating the Board defines the Board's duties to encourage employers and unions "to make and maintain agreements," et cetera.

Other public officials active in our labor disturbances, including the Assistant Secretary of Labor, Edward F. McGrady, the Hon. M. C. Sloss, arbitrator, and Dean Wayne L. Morse, arbitrator, have not hesitated to warn our unions that their violations of contract were indefensible.

Here is a list of the 22 association labor agreements on the West coast, all of which provide for arbitration of disputes in one form or another. In all cases the arbitrator is appointed by the conciliation service or the Secretary of the Department of Labor except in two instances where the appointing power is local.

List of all association agreements on the Pacific coast crew and port labor showing the authority which appoints the referee or arbitrator

Association	Union	Authority which appoints referee or arbitrator
Pacific American Shipowners Association.	National Organization of Masters, Mates, & Pilots of America, West Coast Local No. 90.	Secretary of Labor.
Do	Marine Engineers' Beneficial Association (Pacific Coast Division).	Do.
Do	American Communications Association Marine Division.	Conciliation Service of the U. Department of Labor.
Do	Pacific Coast Marine Firemen, Oilers, Watertenders & Wipers Association.	Do.
Do	Marine Cooks and Stewards Association of the Pacific Coast.	Do.
Shipowners Association of the Pacific coast.	National Organization of Masters, Mates & Pilots of America, West Coast Local No. 90.	Secretary of Labor.
Do	Marine Engineers Beneficial Association, Pacific Coast District.	Do.
Do	American Communications Association, Marine Division.	Department of Labor.
Do	Pacific Coast Marine Firemen, Oilers, Watertenders & Wipers Association.	Secretary of Labor.
Do	Marine Cooks & Stewards Association of the Pacific Coast.	Do.
Do	Sailors Union of the Pacific	Director of Conciliation and/or Secretary of Labor.
Waterfront Employers Association of the Pacific Coast.	International Longshoremen's and Warehousemen's Union, District No. 1.	Secretary of Labor.
Waterfront Employers Association of Seattle.	Seattle Local 1-19, International Longshoremen's and Warehousemen's Union.	Do.
Waterfront Employers of Seattle, Port of Tacoma.	Local 38-97, International Longshoremen's Association.	The president of the Tacoma Central Labor Council and the president of the Tacoma Chamber of Commerce.
Waterfront Employers of Seattle.	Checkers Association Local 38-36, International Longshoremen's Association.	Secretary of Labor.
Do	do	Do.
Waterfront Employers of Portland.	Supercargoes and Checkers, Local 38-78A, International Longshoremen's Association.	Do.
Do	do	Do.
Waterfront Employers Association of San Francisco.	Ship Clerks Association Local 1-34, International Longshoremen's & Warehousemen's Union.	Do.
Waterfront Employers Association of Southern California.	Local 1-20, International Longshoremen's & Warehousemen's Union.	Do.
Do	Marine Clerks Association, Local 1-63, International Longshoremen's & Warehousemen's Union.	Regional Labor Board, Twenty-first District.

There is not a single labor agreement by any of the coastwise and off-shore shipowners associations or by any of the water-front employers associations with any of the maritime unions which makes any provision whatsoever for the Maritime Labor Board.

This arbitration machinery represents the evolution of long and painstaking efforts on the Pacific Coast, and any impairment in the effectiveness of this machinery would be deplorable; yet the Maritime Labor Board, in an effort to augment its power and authority, has cooperated with certain of the unions in efforts, unsuccessful to be sure, to supplant the Department of Labor with whose help we have had what peace there was.

A word in conclusion: Shipping on the Pacific coast is united in its opposition to extending the life of the Maritime Labor Board. In authorizing me to express their views to your committee, they have

only one reason for their opposition, and that is their desire to eliminate from the labor scene all complications which threaten the peace and harmony on the water fronts of the Pacific coast ports and on board ships operated from that coast. We want a peaceful water front; we want the opposite of the last 7 years of alternating strikes with job-action.

For the best interest of shipping, the Maritime Labor Board should be allowed to pass out; its functions returned to the Conciliation Service of the Department of Labor; and the best of its field personnel transferred to that Department.

I am very grateful to you for the time you have allowed me.

Senator RADCLIFFE. Are there any questions, Senator Maloney?

Senator MALONEY. No.

Senator RADCLIFFE. Senator Mead?

Senator MEAD. No.

Senator MALONEY. I understand Judge Burns has a short statement and will take but a few minutes.

Senator RADCLIFFE. All right.

STATEMENT OF JOHN J. BURNS, GENERAL COUNSEL, AMERICAN MERCHANT MARINE INSTITUTE

Mr. BURNS. Mr. Chairman and gentlemen: I am authorized to appear in opposition to the continuance of the Maritime Labor Board as provided for in this bill.

We oppose this bill for two reasons: The present board is unnecessary, so far as preservation of peaceful labor relations in maritime affairs is concerned, and we believe that the Government now has an adequate—in fact, an excellent—mediation division in the Department of Labor.

One would get the impression from the testimony of the Board members that the fears of 1937, when collective bargaining was either ignored or was ineffective, is continued today. One would get the direct impression that whatever good has come to labor relations in the maritime field is due to the fact that this tribunal has been created by Congress. So far as the American Merchant Marine Institute is concerned, nothing could be further from the truth.

This board, however sincere and well-meaning its members are, has made no significant contribution to the cessation of strikes on the waterfront. Its progress has been due to the fact that in 1938 a contract was entered into largely through the efforts of Frank J. Taylor, president of the institute, and the labor representatives of the National Maritime Union, which with great particularity states the agreement under which the parties would break out their mutual problems.

In that contract there was a provision for arbitration by a board or committee with members designated by the two sides, and for a final arbitrator the designation was to be by the Division of Conciliation of the Department of Labor.

For almost 3 years the parties have worked on the old-fashioned technique across the table, and, thanks to the efforts of both parties, only one issue, so far as the unlicensed personnel is concerned, has gone to arbitration. As a matter of fact, only a few weeks ago, on

April 14, to be exact, there was an agreement signed between the Marine Engineers Beneficial Association and the Seas Shipping Co. That was the dispute which the Maritime Labor Board was unsuccessful in settling.

I think it is due to the lack of confidence that the industry as a whole has in this body that the designated arbitrated agent was the Department of Labor and not this Board, to whom care has been committed with special emphasis on seeking and fostering improved labor relations in the maritime field.

I think from a governmental point of view there is little sense to an intermediate mediation tribunal. It has been stated here in the testimony of Dr. Bruere and Dr. Bloch, that either party may call in the services of the Department of Labor.

It seems to me that to have a Board like this continued, which has not the confidence of the people who are interested, whose record is, so far as I am able to give personal testimony, one of no substantial contribution, is to have an unnecessary governmental appendage which cannot be justified either by the terms of the congressional grant of power or by the actual facts as we have seen them.

Dr. Bloch, I am afraid, was guilty of a fallacy when he said that if in 1938, when Congress followed the recommendations of the then chairman of the Maritime Commission, Mr. Kennedy, that there be an extension of governmental conciliation, it was so vital that we should have some administrative handling of labor disputes, how much the more is it necessary when the Government is expending almost $5,000,000,000?

As between 1938 and 1941, there has been a distinct improvement in the chaotic conditions that existed in 1938. There has been orderly development on both sides. There has been a progressive attempt to go forth and reach, by the processes of collective bargaining, an understanding; but in that process I most stoutly maintain that this present tribunal has made no significant contribution.

Senator RADCLIFFE. Are there any questions? If not, we will now have the statement of Mr. Cornelius H. Callaghan.

STATEMENT OF CORNELIUS H. CALLAGHAN, MANAGER, MARITIME ASSOCIATION OF THE PORT OF NEW YORK

Mr. CALLAGHAN. The Maritime Association of the Port of New York, organized in 1873, embraces all branches of shipping within its membership of over 925 persons, firms, and corporations, including domestic and foreign steamship lines, stevedores, canal operators, towing and harbor transportation, shipbuilding and ship repairers, drydocks, warehouses, terminals, oil and coal companies, marine suppliers, and all other allied industries. This membership gives employment to hundreds of thousands of workers, afloat and ashore, not only in the port of New York, but in all other parts of the United States.

This association, in common with other organizations devoted to the maritime industry, is unalterably opposed to H. R. 4107, for the following reasons, of which it is definitely convinced:

First, that there is no necessity for the establishment of a Maritime Labor Board as the powers proposed for it are already possessed by

the Department of Labor through its Conciliation Service which has functioned successfully for some years.

Second, that steamship companies have existing contracts with maritime unions which provide for the settlement of all disputes and frequent appeals have been made to the Conciliation Service of the Department of Labor; the establishment of another bureau to perform the same service would not only impair the efficacy of these contracts but would be wasteful and mere duplication.

Third, that the maritime industry is already overburdened with legislation requiring the submission of various annual and intermediate reports to Federal agencies, including the United States Maritime Commission, Interstate Commerce Commission, Wage-and-Hour Division of the Labor Department, and others, and this burden should not be increased by another overlapping Federal agency.

Fourth, that the maritime industry is apprehensive lest the grant of an extension of such authority would conflict with the functions of other governmental departments, such as the United States Maritime Commission, Bureau of Marine Inspection and Navigation, and others.

Senator RADCLIFFE. The subcommittee will now stand adjourned until 10 o'clock tomorrow morning.

(At 1:25 p. m. an adjournment was taken until Wednesday, May 14, 1941, at 10 a. m.)

MARITIME LABOR BOARD

WEDNESDAY, MAY 14, 1941

UNITED STATES SENATE,
SUBCOMMITTEE OF COMMITTEE ON COMMERCE,
Washington, D. C.

The subcommittee met at 10 a. m., pursuant to adjournment on Tuesday, May 13, 1941, in the Commerce Committee room, the Capitol, Senator George L. Radcliffe, chairman of the subcommittee, presiding.

Present: Senators Radcliffe and Maloney.

Senator RADCLIFFE. The subcommittee will come to order.

We shall hear first this morning Capt. Walter J. Petersen.

STATEMENT OF WALTER J. PETERSEN, PACIFIC AMERICAN SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST

Mr. PETERSEN. Mr. Chairman, my name is Walter J. Petersen. I represent the Pacific American Shipowners Association of the Pacific Coast. I am the Washington representative and have been for quite a few years.

I desire only to clear up some few points, Mr. Chairman, to have our matter understood, so far as these hearings are concerned. We had no hearing on this bill, H. R. 4107, before the House Merchant Marine and Fisheries Committee; consequently, we did not appear in opposition to the bill, because we knew nothing about it until after it was reported.

However, during the hearing on the so-called Dirksen bill, H. R. 2662, the matter came up incidentally in relation to the forming of a new mediation board, and the question of whether or not the present one should be continued was only incidental. Consequently, there has been no direct testimony on the part of the shipowning and operating industry concerning this legislation at all.

If it please the committee, I want to call to your attention certain matters in the report on H. R. 2662 that show the general attitude of the shipowning industry with relation to continuation of this Board, and if I put it in order, it will be easier for you people to discuss it, having it in the record.

So, I call your attention to the statement made by C. H. Callaghan, who is the manager of the Maritime Association of the Port of New York, comprising a large number of shippers and operators, who appeared before the House committee at the hearings on H. R. 2662, his statement appearing at page 1 of this report. The Maritime Association of the Port of New York was in absolute opposition to the continuation of this Board or to the starting of another one.

Yesterday, at the pleasure of the committee, I introduced a new statement on the part of Mr. Callaghan, in which he emphasized his previous report and added new matter as to his objections in relation to the bill.

Yesterday we had before us Judge Burns, of the American Merchant Marine Institute, who expressed the opinions of the American Merchant Marine Institute as of yesterday.

At the hearing on H. R. 2662, Mr. Francis R. Walker, an associate of Judge Burns, appeared, and he was in opposition to any continuation of the Maritime Labor Board, his remarks appearing at page 33 of the record.

Then, I appeared also at that time, representing our association, and voiced the objections of the Pacific coast. My remarks in that connection appear at page 400 of the record.

The Lake Carriers' Association also appeared in opposition to this bill, and their remarks appear in the record at page 405 of the hearings on H. R. 2662.

The Great Lakes Towing Co., appeared in opposition to any continuation of this board, and their remarks are shown at page 406 of that record.

Then, the Mississippi River System Carriers' Association, the representative of all the inland water carriers, appeared in opposition to any continuation of the Board or to having any specialized board, and their remarks appear at page 407 of that record.

Next, the National Council of American Shipbuilders sent in its statement in opposition to having the Maritime Labor Board having anything to do with the matter of shipbuilding, and its statement appears at page 408 of that record.

The Newport News Shipbuilding Co. was in opposition to any continuation of this board, and its remarks appear at page 408 of the record.

Yesterday Mr. Foisie, in talking for us of the Pacific coast, called attention to the fact that the industry was not alone in opposition to the continuation of this Board; and we find that John H. Collins, representing the Independent Employees of New York, largely tanker groups, was opposed to the continuation of this Board, and his remarks appear at page 43 of the record.

Patrick McHugh, representing the Atlantic Fishermen's Union, was the next spokesman opposed to the Board, and his remarks appear at page 67.

Harry Lundeberg, who is the president of the Seafarers' Union, which represents all A. F. of L. seamen in the United States, was opposed to this legislation, and his remarks appear on pages 344 and 345 of that record.

Next, William E. Green, president of the American Federation of Labor, writing to Mr. Lundeberg, opposed this organization, and his remarks appear at page 338 of the record.

John R. Owens, secretary-treasurer of the International Longshoremen's Association, appeared in opposition, and his remarks appear at page 362.

So, you see, Mr. Chairman, that industry and labor seem to be of the opinion, after 3 years' trial of the Maritime Labor Board, that the efforts of this Board have not been either conducive to industrial peace, so far as our industry is concerned, or of any value to us in

the adjustments of the many disputes that have taken place in the industry.

There is an old saying: "The proof of the pudding is in the eating." After 3 years of trial we have come to the definite conclusion that the continuation of the efforts of this Board will not be of any value to us as an industry.

It costs in the neighborhood of $150,000 a year to carry out the work of this Board. We have no personal feeling against any one of these gentlemen. I myself have met them from time to time, and we are personally friendly; but it is a matter of industry control that we are considering.

Mr. Foisie appeared before you yesterday as the president of the Waterfront Employers Association of the Pacific Coast. His jurisdiction is the entire Pacific coast in relation to longshore operations. He appeared not alone for his particular group but for all the maritime groups on the Pacific coast.

For 12 years I was general manager of the Waterfront Employers Association of the Pacific Coast after the war. I was there at the time the Hanna Board was appointed by the President of the United States and when Mr. Bloch was secretary. I had negotiations with him at that time and, of course, was quite familiar with that Board.

While we had no objections to the formation of this Maritime Labor Board—and I had numerous conferences with the dearly beloved late Senator Copeland in this room concerning this matter—we hoped that perhaps something might be done to compose the differences that existed in the maritime industry. Mr. Joseph Kennedy, who was then Chairman of the Maritime Commission, was also in collaboration and aided us in trying to bring to some conclusion the disastrous strikes that were taking place and to bring about some order and discipline aboard our ships.

However, as Mr. Foisie said, the matter has become steadily worse.

We went into contractual relationship with our men and gave them the best contract, according to President Green at the time, and the Hanna Board passed its judgment on the contract. It was the best in the country, perhaps in the world. We have been trying in every way we can to make our contracts binding and the means of industrial peace. It has not worked out that way.

Senator RADCLIFFE. Captain Petersen, are your objections to the continuation of the Board based mainly on the theory that you think the Board is unnecessary, or are you raising objections to the methods used or the objectives sought?

Mr. PETERSEN. Well, it is a little bit of both, Senator. So far as the objectives are concerned, as a matter of ideology, the objectives of this Maritime Labor Board are the objectives I had when I was general manager of the Pacific Coast Waterfront Employers, trying to bring order.

But we believe that there are too many organizations of this kind already in existence to hamper, harrass, and cuss the maritime organizations up hill and down dale. There are too many. We have to report to too many organizations in Washington. The reports we have to make out for the various bureaus and boards of the United States cost us a tremendous sum of money and a great deal of time and labor.

We do not believe in duplicating these things, and if we can get rid

of one—that is, one phase of the situation—it will relieve us of a considerable amount of trouble, especially when there is an organization that is already in being, like the Conciliation Service of the Department of Labor, which has been effective in bringing about these contractual relations with some measure of peace.

When you take into consideration that after 3 years' trial of it the 22 organizations on the Pacific coast having contractual relations with our organizations have refused to give consideration to the Maritime Labor Board at all, it shows that industry has no confidence in the work of this Board. Once we have no confidence in it, what is the use of having a board of that kind?

In order to invoke the aid of the Maritime Labor Board, it is necessary to have the consent of both parties. Both sides must agree to call in the Board for adjudication of the dispute. Now, when you find an industry that is practically unanimous in its opposition to calling in that Board, what is the good of continuing its services, especially when there is the feeling on the part of the industry that these gentlemen do not properly perform their duties, so far as meeting with labor and industry on a fair basis for consideration is concerned? Why should there be any need to, when we already have the machinery set up by the Conciliation Service of the Department of Labor, which is effective, satisfactory to the industry, and in a large measure satisfactory to labor?

It is not altogether one-sided. You will have here testimony from some labor representatives who will not have anything to do with this Board either.

So, it seems to us, Mr. Chairman, that a Board that can do so little for us, and a Board that is under, we might say, suspicion on the part of industry generally, that they are not fair to the industry, is not a Board to be continued in office, and we hope that we shall not be in a position to have to contend with it further, because if we do we know that we have put ourselves in the position of opposing this Board. We do not believe these gentlemen would use any methods of making it tough for us hereafter, but we believe that we could get along without them very well, and that the Government would be spared the amount of money that is required to maintain the Board.

Senator RADCLIFFE. Thank you, Captain Petersen. We shall now hear from Captain Delaney.

STATEMENT OF JAMES J. DELANEY, PRESIDENT, NATIONAL ASSOCIATION OF MASTERS, MATES, AND PILOTS OF AMERICA

Mr. DELANEY. Mr. Chairman, my name is James J. Delaney. I am president of the National Association of Masters, Mates, and Pilots of America, affiliated with the American Federation of Labor, and also a member of the Railway Labor Executives Association. I am speaking also for Mr. Harrison, president of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, and Station Employees, who is unable to be here, but who, I believe, has sent a communication.

Mr. Chairman, I desire to say that I am heartily in favor of continuing this Board, because, as I said to the House, this is a highly

specialized industry, and we need a specialized board to handle the industry.

We all know of the chaos that existed in the railroad industry at the time the Railway Labor Board came into effect, and we know of the peace that has since come out of that chaos. It did not come normally, of its own accord.

I believe—and I think I know from practical experience—that the Maritime Labor Board has been instrumental in bringing peace out of chaos, and is maintaining peace instead of chaos.

Testimony was brought forward here yesterday that in the case of the Seas Shipping Co. this Board was unable to settle a dispute, and had to submit it to a supermediation board to have it settled. I think we will all agree that the Department of Labor has had many cases that it could not settle, that they have had to submit to this supermediation board. I have no quarrel with the supermediation board, because Mr. Harrison, for whom also I am speaking here today, is a member of that Board, and anybody who knows Mr. Harrison, and knows his ability, his fidelity, and his integrity would not question submitting any matter to him.

Neither have I any quarrel with the Labor Department. Dr. Steelman and I are, I believe, personal friends. I never come to Washington—and I come quite often—but that I do not see him; and if I do not see him, I call him up and say "hello" to him.

The fact is that this is a specialized industry, as I stated before, and we need special machinery to handle it. If the Labor Department were competent and had the machinery to handle it, to my way of thinking this Board would never have come into existence. It was out of sheer necessity that this Board was brought into existence. I believe it should be continued.

Many people say that there should be only one department and not so many different boards. I am wondering if they would say that the National Mediation Board and the National Railroad Adjustment Board should be destroyed and both of them placed in the Labor Department. I think it was admitted that you would find your railroad labor organizations making an awful howl and saying that they wanted those Boards to remain in existence because they brought peace out of chaos and are maintaining peace in that industry.

It is not ony today or yesterday that I sought to maintain peace in this industry; I have been at it for years. When the shipping code failed during the N. R. A. days, when I was labor adviser for the Government, I tried then to have machinery set up in this industry that would keep peace in it and avoid the chaos that has come into it. But while I conferred many times with the steamship owners, I was unsuccessful in getting them to cooperate to have that machinery set up.

If you will go into the records of the hearings on your subsidy bill in 1936—and there were many hearings—you will see in those records that I appeared before this Commerce Committee and before the House Committee on Merchant Marine and Fisheries and submitted what I proposed here, a Maritime Labor Act which I had transcribed from the Railroad Labor Act, and I asked that it become the labor provisions of the subsidy bill.

After pressing the late Senator Copeland for it, he told me he could not get the bill passed with those provisions in it. But a year later,

when the chaos did come, both the late Senator Copeland and Congressman Bland requested me to come to Washington and testify for some such bill. I declined and gave my reasons for declining. The chaos was so bad, the bill would not work; and I know the steamship owners well enough to know that if I came here and testified for that bill, and the bill did not work, they would immediately say that they had told Captain Delaney a couple of years before that such a bill would not work in their industry. But it would have worked before the chaos came, and it would have prevented the chaos.

This Board when it came into existence brought peace out of chaos and is maintaining peace. I hope, Mr. Chairman, that it will be continued so as to maintain peace in this industry—and God knows we need it. We have had plenty of chaos.

It was testified here yesterday how well they were organized on the West coast. We all know—we are familiar with that situation—how that organization came about on the West coast. There was a civil war, if you please, and God knows that is no credit to any of us. Those are not the things we want. Neither labor nor industry nor the public wants such things; they want peace. They do not want particularly means of settling strikes; what I believe they are interested in, and what I am interested in, are ways and means of preventing strikes.

This is my industry. I have been in it since I was 13 years' old. I have been trying, to the best of my ability, to make it an industry that we could all be proud of. I think it can be made so, because the industry is very fascinating and healthful and can be built up, as I have said many times before this Commerce Committee and before the House Merchant Marine Committee, if we can get high school and college graduates into it, provided we place the incentive here for them to come, the same as has been done in other industries, because, as I just said, it is fascinating and healthful, and the American boy is not lazy. But they are not going to come here, as I said before the House committee in the hearings on the Dirksen bill, if it is going to be pointed out as the one and only industry where the employees are placed in a straight jacket by laws.

I think that this board has done and is doing a very good job, and it did that job under very difficult circumstances. There was chaos, as I said, when it came in. The men on the Board were not familiar with the industry, and anybody who is familiar with this industry and with how specialized it is cannot help but appreciate the fact that you cannot grasp and learn this industry overnight; it takes some time, and I myself believe that this Board is now just beginning to find itself; it is only just beginning to realize what is going on in the industry, and that from now on will be the most effective time for the benefit of this country.

They were appointed for a purpose; yes. They were appointed to make a study of the industry. But apparently the operators do not want a study made of this industry. However, that study should be made, so that the people who are handling it will know just what is going on and can tell the Congress and the President of the United States what is wrong, if anything, with this industry.

Now, we are all praising the railroad industry and the Railroad Labor Act. But that act was not something that was created overnight, and I know it. Being a member of the Railway Labor Executives Association, I was a party to the Transportation Act of 1920, the Emergency Act of 1933, and the Railroad Labor Act of 1926.

When the Railroad Labor Act of 1926 was passed, the railroads said that that was going to cure all ills and that there would never be any more trouble. But the ink was hardly dry on that act when the industry went backward.

Then there was passed the Emergency Act of 1933 and finally the amended Railroad Labor Act of 1934 to put teeth into the law, and from then on it has worked.

There is a great deal of hollering going on throughout the country about the Wagner Act and the terrible instrumentality it is against the employers of this country. Yet those same people are praising the Railroad Labor Act. I do not have to tell you, Senators, how mild the Wagner Act is as compared with the Railroad Labor Act.

When you violate the Wagner Act, you are told to cease and desist from doing so; but when you violate certain sections of the Railroad Labor Act, you are leaving yourself open to a fine of $20,000 or 6 months in jail, or both, and every day that you continue to violate it constitutes a new offense. So, you can readily realize the difference between the two acts.

The Railroad Labor Act has worked. It has kept peace in the industry, because it is an instrumentality that was developed for that purpose.

I believe that the Maritime Labor Board was created for the same reasons that the Transportation Act, the Newlands Act, and the Railroad Labor Act were passed: To bring peace out of chaos, because there was plenty of chaos on the railroads years ago.

This instrumentality has been created to bring peace out of chaos and to keep the peace in the industry, and this Board, I believe, was created for that purpose. If it is continued, like the Railroad Labor Act, Mr. Chairman, I believe it will build up an instrumentality in this industry that is sorely needed. It is as sorely needed in this industry as in any other, and it will bring peace out of chaos and will bring good will between employer and employee and make this industry a credit to this country.

Senator RADCLIFFE. Thank you, Captain Delaney.

The next speaker from whom we shall hear is Colonel Barber.

STATEMENT OF A. B. BARBER, MANAGER, TRANSPORTATION AND COMMUNICATION DEPARTMENT, CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. BARBER. Mr. Chairman and gentlemen, I am appearing here in behalf of the Chamber of Commerce of the United States in regard to the bill H. R. 4107.

In March 1940, the chamber's Special Committee on Merchant Marine submitted a report on American shipping including a brief discussion of the Maritime Labor Board whose report to Congress in summary form had just been made public. I wish to quote our committee's conclusions pertinent to the pending bill, as follows:

> During the life of the Board thus far its mediatory powers have been relatively little used and have produced no appreciable effect on the marine-labor

situation. Its record is not impressive. On the other hand, other Government agencies have been and are now engaged in the settlement of labor disputes in the maritime field, notably the Conciliation Service of the Department of Labor. The operations of the Conciliation Service have been energetically conducted and with a substantial degree of success. The Service has gained the confidence of both employers and employees and is adquately organized to handle disputes in the maritime-labor field.

In view of these facts there is no apparent need for continuance of the Maritime Labor Board and it should be allowed to expire.

Our committee's report which included the foregoing statements was printed and distributed to the membership of the Chamber throughout the country prior to being brought up for discussion and action at the annual meeting of the members on April 29–May 2, 1940. At that meeting a declaration was adopted that—

conciliation in this, the maritime labor, field should remain with the Conciliation Service of the Department of Labor, the operations of which preclude any public need at this time for a special agency to deal with maritime labor disputes.

Developments of the past year show that this situation continues. The Chamber therefore recommends that the period of existence of the Maritime Labor Board should not be extended.

Senator RADCLIFFE. Thank you, Colonel Barber.

We shall now hear from Mr. John Hawk, secretary-treasurer of the Seafarers' International Union of North America.

STATEMENT OF JOHN HAWK, SECRETARY-TREASURER, SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA

Mr. HAWK. My name is John Hawk. I am secretary-treasurer of the Atlantic and Gulf District of the Seafarers' International Union of North America, affiliated with the American Federation of Labor.

Mr. Chairman and gentlemen, I should like to make a statement for the record in opposition to bill H. R. 4107.

I appreciate the opportunity to present a fundamental viewpoint on the problem of the continuation of the Maritime Labor Board in view of our national-defense emergency. In considering this problem, I realize fully that Congress faces the task of formulating the heaviest tax program that has ever been presented to the people of this Nation.

I do not wish to discount the work of the Maritime Labor Board, but I wish to show you that the work of the United States Conciliation Service not only meets but far surpasses the work of the Maritime Labor Board. After I have proven these points I am sure that you will see that there is no need to continue the Maritime Labor Board. We have so many needs in the present defense emergency that we do not desire to continue any board for which there is no essential need.

Any organization which proposes to carry on mediatorial work for the Nation must be effective in comparison with other organizations qualified to do the specific work required of it in point of procedure. The procedure consisting of methods, organizational contacts, experience in the field, and practical consideration of cost, volume of business, and efficiency performances must be outstanding in these days of national-defense needs.

Any organization to be effective in point of procedure should have access to the field in which it operates and to necessary adjacent fields. The Maritime Labor Board has not attained access to the necessary organizations and agencies operating in the field of maritime disputes when compared with the access which the United States Conciliation Service has had over a long period of years. There never has been any question as to the access of the Conciliation Service to these organizations. No question has ever been raised on this point and no one is raising this question now. On the other hand, this is a serious consideration in relation to the Maritime Labor Board as substantiated by the witnesses who appeared before the House Maritime, Merchant Marine, and Fishery Committee on H. R. 2662.

Mr. Callaghan, manager of the Maritime Association of the Port of New York, said:

We are convinced that there is no necessity for the establishment of the Maritime Labor Board, as the powers proposed for this board are already in the hands of the Department of Labor through its Conciliation Service. The Conciliation Service of the Department of Labor has functioned for a great many years, and we believe has successfully settled all labor disputes which have come before them.

The great majority of the steamship companies have existing contracts with maritime unions which provide for the settlement of all disputes by the Conciliation Service of the Department of Labor, and there appears to be no need for the establishment at this time of another board to perform the same service.

Harry Lundeberg, on behalf of all seamen in the United States affiliated with the American Federation of Labor, Sailors' Union of the Pacific, Seafarers' International Union, and on behalf of the American Federation of Labor, testified in part along with Congressman Oliver:

The Department of Labor, I must say, not because we are using them, but I believe that they have the best conciliators in the field, and they have more experience than any other Government bureau in that type of work, because they have been in the field for years, and they are old-timers, and they have handled all kinds of labor disputes. I have noticed in many negotiations we have conducted that they have been very helpful to both sides. I do not think this thing will improve it at all except to the extent that it will build up another bureau, of which I think we have enough already, and it might cost the Government a lot more money.

Congressman OLIVER. Mr. Lundeberg, is it your feeling that the force of conciliators in the Department of Labor is perfectly well qualified to settle or try to intervene in maritime-labor disputes?

Mr. LUNDEBERG. Yes; it is my experience, Mr. Oliver. We have used the Labor Conciliation Service on the Pacific coast, on the Gulf, and on the Atlantic coast and up in the Great Lakes, and it is my experience that they have the most qualified people of any department in Washington to handle labor disputes.

Congressman OLIVER. You are aware of the comment that has been made here to the effect that the maritime industry is more complicated in some ways than other industries and that more thoroughly trained individuals must be found to enter into mediation and conciliation efforts than could be found in the Department of Labor?

Mr. LUNDNBERG. I do not know where they will find them or train them, because these people in the Department of Labor have experience over years, and the maritime industry is not any more difficult than any other industry in that respect, and if you are going to have a special board of maritime industry you must have it for coal, steel, lumber, and everything else.

Congressman OLIVER. That is my opinion, and I am glad to know that it is substantiatd by a man who has been interested in maritime labor practically all his life.

Mr. LUNDEBERG. We have another board in the field, the Maritime Labor Board, which was set up here a couple of years ago to study conditions in the field and make reports back to congress. I understand they are going out of business in June of this year, and as far as we are concerned, we

hope they go out of business because they only duplicate anyway, and there is just a little additional work and expenditure of money which is already taken care of by the Government, already taken care of by the Department of Labor. They cannot show me or anyone else that they know anything more about maritime problems than the Conciliation Service and Dt. Steelman.

Further on, Mr. Lundeberg said:

I believ the Conciliation Service is doing a good job. I have heard no one yet who has come in here to blast the Conciliation Service. I have read many accounts of the Conciliation Service in various papers, and I have never yet heard the operators, and I have never heard the unions, blast them; so it seems that the operators and unions have found a happy medium where they can air out their difficulties.

Congressman Oliver, of Maine, testified that:

The Department of Labor has a Conciliation Service which seems to me to be available for the arbitration of these disputes.

John J. Collins, representing Licensed Officers' Union and Unlicensed Seamen's Unions, New York City, said:

We oppose the bill on the principle that the need for a Maritime Labor Board has not been proved.

One of the reasons for the institution of a Maritime Labor Board was to expedite the conduct of elections, but they offer no solution for the expediting of such elections.

Certainly the appointment of a new board without any experience whatsoever is not going to help the situation. I have no complaint about the introduction of a Maritime Labor Board, but I see no need for it.

It is necessary only that a conciliation agency should have access to the field in which it handles a particular dispute, but also to adjacent fields open to it under the law. This is a matter of practical contacts. The Conciliation Service has access to every field of mediation with the exception of the railway industry. It has established access to the maritime industry and has operated in this field over a long period of time. Its operation has been successful. When the Maritime Labor Board was established, it was projected chiefly as a fact-finding agency. There was no representation under the law of intent to exclude the Conciliation Service from this field or to give the Maritime Labor Board exclusive right of mediation. On the other hand, the Maritime Labor Board has not attained access to existing organizations in its own field comparable to that already established by the United States Conciliation Service.

Let us look at some of the points the Maritime Labor Board used to substantiate itself before the House Committee on Merchant Marine and Fisheries. One of its main points is that a number of agreements between unions and employers associations state that if agreement is not reached they will present the case to the Maritime Labor Board to negotiate. The Board has quite an impressive list, 29 agreements in all. I should like to reaffirm the statement made by Mr. Foisie, of the Waterfront Employers Association, San Francisco, Calif., before this committee on May 13, 1941, concerning the number of agreements in which the Conciliation Service is named as the agency to which the parties shall refer their disputes—there being approximately 400 such agreements with important shipping companies and outstanding maritime unions in the country. The companies under contract with the Seafarer's International Union of North America are Arnold Bernstein Shipping Co., Eastern Steamship Co., New England Steamship Co., A. H. Bull & Baltimore Insular Lines, Colonial Navigation Co., Savannah Line, Alcoa Steamship Co., Cuba Distilling Co., Fall River Navigation Co., Seatrain Lines, Inc., Peninsular & Occidental Steamship Co., Atwacoal Co., Colabee Steamship Co., Waterman Steamship Co., Mississippi Steamship Co., South Atlantic Steamship Co., Eastern Transportation Co., Southern Transportation Co., Canadian & Gulf Steamship Co., Martin Marine Transport Co., Hedger Steamship Corporation.

Our contracts with all of the above companies have a provision that, if a port committee composed of three members of the union and three members of the company cannot settle any dispute that may arise, then the Conciliation Service of the Department of Labor shall appoint an arbitrator. Further, the Conciliation Service has actually participated in conciliation with many of these companies and unions named in these agreements, and with many more unions and companies which are not named herein.

The Maritime Labor Board stresses the fact that it has 4,000 contracts in its possession. The fact that it has collected these agreements to carry out a law under which they operate, a law which says that all agreements in the maritime field must be filed with the Maritime Labor Board, is not in itself a reason for the continuance of the board. One might hold thousands of agreements but unless one was called in case of trouble to do the negotiating, the agreements would be of little value. A large part of the contracts the board holds name the United States Conciliation Service as the group to do the conciliating.

If having access to contracts were the important point in negotiating, the Conciliation Service is well equipped not only with contracts in the maritime field, but in every field, as the Department of Labor has the greatest collection of contracts available. And if studying the contracts were the important point, as the Maritime Labor Board suggests, the Conciliation Service would be well qualified. The Service makes careful study of all the contracts which its 110 commissioners have helped to negotiate in almost any type of business in the country. The fact that the contract has been thoroughly studied does not say that there will not be any trouble for the next year. The deadlock generally comes from some new point which has not previously come out in the negotiations for that particular industry.

The Maritime Labor Board tells us that it can do preventive work since it knows the date when most contracts will expire. The Conciliation Service also has a record of the expiration of contracts. It has done an outstanding piece of work in the preventive field. During the last year less than 10 percent of the preventive cases brought to its attention resulted in strikes. The preventive work of the Conciliation Service is only a part of its work and yet its preventive work is many times greater than the entire work of the Maritime Labor Board.

The important factor in conciliation is not the fact of having contracts in your possesison but to be called in on the negotiations to actually participate in the settlement.

I should like at this time to present some figures which the Conciliation Service has published, showing the total number of situations

in the maritime field and the number of workers involved in which the Service has taken part from July 1938 to December 31, 1940.

Situations disposed of in the maritime field by the U. S. Conciliation Service for the period July 1, 1938, to Dec. 31, 1940

	Strikes	Workers involved		Strikes	Workers involved
Strikes	34	36,196	Other situations	133	2,558
Lock-outs	3	2,557			
Threatened strikes	15	16,888	Total	283	252,972
Controversies	49	126,384			
Arbitrations	49	68,389			
Total	150	250,414			

These figures prove conclusively that the bulk of the work in the maritime field is done by the United States Conciliation Service. These figures show why the maritime field is very peaceful today. The fact of the existence of the Maritime Labor Board has not been the reason for this peace. Of course, the Maritime Labor Board did mediate some situations, but every organization could say that it has accomplished something. It uses as its outstanding example the West Coast situation of 1939. Later, I notice in its testimony that members of the Maritime Labor Board say they were not in officially on this situation.

Not only has the Maritime Labor Board failed to establish access to the major portion of necessary organizational contacts in its own field, but it lacks contacts with the necessary adjacent fields. In fact, by law it is prohibited from conducting operations in adjacent fields.

As Mr. Lundeberg, on behalf of all seamen in the United States affiliated with the American Federation of Labor, said, "If you are going to have a special board for the maritime industry you must have it for coal, steel, lumber, and everything else." Such board set up for every industry might prove extremely awkward from the point of administration. There would be a duplication of work and it would probably raise a goodly number of jurisdictional problems. For another thing, they would pose the difficult job of securing for their staffs a thoroughly trained personnel which would at the same time have the respect and confidence of both management and labor. Such a plan would definitely cost the Government many times the amount now spent for our work of conciliation. In other words, it would create many new problems for us.

Substantiating these points of view, permit me to call attention to a statement made by Francis B. Walker, representing the American Merchant Marine Institute, New York City:

> I might call to the attention of the committee the provisions of article XII of the institute's standard form of contract with the National Maritime Union of America, which is typical of such agreements in the industry. This article provides that, in case of any dispute, the union and the company involved will make every effort to reach an amicable and satisfactory adjustment. If no such adjustment can be reached by the representatives of the company and the union, both parties are obliged to submit the matter to arbitration by a joint part committee with three members representing each side. If they cannot agree, the seventh member, or umpire, is designated by the Mediation and Conciliation Division of the United States Department of Labor. This provision has been in effect for several years and has worked, I believe, to the complete satisfaction of both sides. We do not see any reason why we cannot continue this agreement without the unnecessary interposition of a new governmental agency.

John R. Owens, secretary-treasurer, International Longshoremen's Association, New York City, made the following statement:

> We have used in a great many occasions the services of the Conciliation Service of the Department of Labor. We find them very well equipped and very satisfactory to us. We do not see any reason why there should be any other organization in the field. We do not see any reason for this title III legislation at all, and we ask you not to approve it.

The Atlantic and Gulf District of the Seafarers' International Union of North America has some twenty-odd contracts with various steamship companies on the east coast, and in every one of those contracts there is a provision or clause to the effect that if any dispute cannot be settled between the union and the company, then we are to call upon the Conciliation Service of the Department of Labor. This we have done extensively from time to time, and we have had very satisfactory results from the Department of Labor. In many instances during the negotiation of new contracts a representative of the Department of Labor has been present.

I should now like to call the attention of this committee to the fact that the statement made by Dr. Bloch, that the Robin Line gave the unlicensed personnel a $50-a-month bonus for going to Africa was true, but he failed to go into detail as to how that came about. I, as a member of the negotiating committee representing the unlicensed personnel in this dispute, would like to tell this committee what actually took place.

The Seafarers' International Union of North America demanded a higher bonus on vessels sailing to Africa. The Seas Shipping Co. refused our demand. It has always been the policy for us to call in the Department of Labor to assist in adjusting these disputes. This was immediately done, and after 4 hours and a half of negotiating, a satisfactory agreement was arrived at.

To further prove the inefficiency of this Maritime Labor Board, as was admitted yesterday by Dr. Bloch at this hearing, that Board was called in. He stated that the Robin Line gave the unlicensed personnel an increase in the war bonus to Africa of $50 and that the M. E. B. A. in turn demanded a 50-percent bonus, the Maritime Labor Board being called in to try to settle the dispute.

Dr. Bloch stated that they could not adjust the dispute, and it was referred to the National Mediation Board. Here I want to point out that the dispute came back to the Department of Labor, which is the only body that can refer any matter to the National Mediation Board. This, in our opinion, is only a duplication of service.

In conclusion, I have endeavored to show that the Maritime Labor Board lacks effective access under law and practical operation to the necessary agencies making for peace in the maritime industry; it has a conflicting policy of action, having never determined whether it was a research agency or a practical organization of conciliation; and its cost, volume of business, and quality of performance when compared with the United States Conciliation Service do not justify its continuance in the face of national-defense needs.

Our organization has no need for the Maritime Labor Board and, therefore, we recommend that it be abolished. We intend to use the

Conciliation Service of the Department of Labor, as we have done in the past.

That is all I wish to say, Mr. Chairman.

Senator RADCLIFFE. Thank you, Mr. Hawk.

The next speaker from whom we shall hear is Mr. Samuel J. Hogan, president of the National Marine Engineers' Beneficial Association.

STATEMENT OF SAMUEL J. HOGAN, PRESIDENT, NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, WASHINGTON, D. C.

Mr. HOGAN. Mr. Chairman and gentlemen, my name is Samuel J. Hogan. I am president of the National Marine Engineers' Beneficial Association, affiliated with the Congress of Industrial Organizations and the Railway Labor Executives Association.

I appear to approve the extension of the life of the Maritime Labor Board. During the past 2 years of the existence of that Board it has, in my opinion, done a wonderful job of investigation and research into what is needed within the maritime industry. The Board has made several recommendations in its report to the Congress of the United States under date of March 1, 1940. Some of those recommendations, Mr. Chairman, were not satisfactory to Mr. Shipowner and particularly to the Maritime Commission—and, I might add, also the Bureau of Marine Inspection and Navigation.

During the 2 years of the existence of the Maritime Labor Board, I have had occasion to invoke the service of the Board in 70 cases where my negotiators on the Atlantic, the Gulf, and the Great Lakes became deadlocked with the shipowners. The result of my invocation of the Board under title X of the act brought forth an agreement without any strike action.

I sincerely believe that the Maritime Labor Board is the proper governmental agency for the maritime industry.

The previous speaker mentioned the case of the Seas Shipping Co. It is true that the Sailors' Union of the Pacific did procure a $50 bonus from the Seas Shipping Co. My representative who had negotiated asked for a 50 percent increase. The Seas Shipping Co., through its representative, Mr. Pemberton, would not accede to that bonus, along with the addition of two licensed junior engineers on C–2 type vessels. The Maritime Labor Board, through its mediation service, did everything possible to try to convince Mr. Shipowner that he should comply with the request or demand—make it demand—of the Marine Engineers Beneficial Association.

Mr. Pemberton just happened to run into as hard-boiled a negotiator as he was as the representative of the company, and the Maritime Labor Board could not bring forth an agreement. Quite naturally that Board reported its activities to the Secretary of Labor. She then referred the matter to the National Mediation Board. That Board, after two attempts, did bring forth just what my representative had asked for.

All I can ask of this committee, Mr. Chairman, is that it agree to support the extension of the life of the Maritime Labor Board for the best interests of the maritime industry. That is all I have to say.

Senator RADCLIFFE. Thank you, Mr. Hogan.

The next speaker is Mr. Morris Weisberger.

STATEMENT OF MORRIS WEISBERGER, EAST COAST REPRESENTATIVE, SAILORS' UNION OF THE PACIFIC

Mr. WEISBERGER. Mr. Chairman and Senator, I have here a statement from Mr. Harry Lundeberg, who is secretary-treasurer of the Sailors' Union of the Pacific and acting president of the Seafarers' International Union, which is affiliated to the American Federation of Labor. Mr. Lundeberg was unable to come here, due to negotiations for bonuses on the Pacific coast, so he has asked me to read into the record his statement of opposition to bill H. R. 4107.

Senator RADCLIFFE. Very well. That may be done.

Mr. WEISBERGER (reading):

Statement of opposition to bill H. R. 4107 made on behalf of the Seafarers' International Union of North America, composed of the following unions in the maritime field:

Seafarers' International Union of North America, Atlantic and Gulf Districts, Deck, Engine, and Sewers Departments; Seafarers' International Union of North America, Great Lakes District; Seafarers' International Union of North America, Pacific District, Sailors' Union of the Pacific; United Fishermen's Union of Alaska, Kodiak; Alaska Salmon Purse Seiners Union; Alaska Trollers Association; Washington Trollers Association; Seine-Line Fishermen's Union, California, with branches at San Pedro, San Diego, Monterey, and Terminal Island; Fish Cannery Workers' Union of the Pacific, with branches at Richmond, Pittsburg, Martinez, Benicia, Monterey, San Diego, Eureka, San Francisco, California; Columbia River Gill Net Fishermen's Union; Cannery Tendermen's Union of Alaska and Puget Sound.

To the Senate Committee on Commerce:

GENTLEMEN: Our organizations are definitely opposed to the continuance of the Maritime Labor Board, the life of which, under H. R. 4107, will be extended for another 2 years, and we respectfully cite the following reasons:

First, let us first state that during the existence of the Maritime Labor Board that our organizations, all of whom have contractural relations with their employers, the shipowners, and operators of fishing boats and fish canneries, on the Atlantic, Great Lakes, Gulf, and Pacific coasts, have at no time called upon the Maritime Labor Board in our dealings with our employers; as a matter of fact, we have never used them, and certainly do not anticipate ever using them, because all of our agreements stipulate that in case we cannot reach an agreement with our employers, then the United States Department of Conciliation Service, headed by Dr. John R. Steelman, shall be called in.

We have found the United States Conciliation Service to be very effective in our field, and their conciliators are much more experienced in the maritime field and better equipped, both from the standpoint of personnel and the confidence of both management and labor, to deal with maritime labor problems than the Maritime Labor Board.

Second, not only are we as employees satisfied with the service of the United States Conciliation Service, but apparently the employers, the shipowners with whom we have to deal, are satisfied and prefer it.

Third, the reasons for this preference are obvious; the United States Conciliation Service of the Department of Labor have years of experience in dealing with labor problems in the maritime field, as well as other fields, and due to the fact that they have handled all such problems during the hard years, as well as since our labor problems in the maritime field have become more stabilized, they are more familiar with maritime labor problems than any newcomers could possibly be, and have the confidence of both management and labor.

From the standpoint of personnel, they have many more conciliators in the field than the Maritime Labor Board, which consists of three "commissioners" in the field and some 30 clerical workers in Washington, D. C.

On these grounds we believe it is absolutely a duplication of Government functions, and to continue the Maritime Labor Board for another 2 years will be simply a waste of the taxpayers' money.

Reports have been made to the House Committee on Merchant Marine and Fisheries that since the inception of the Maritime Labor Board (1938), that conditions in the maritime industry have greatly improved. There is no question

but that conditions in the maritime field have greatly improved, but it is not due to the influence of the Maritime Labor Board, and we speak on this subject with some knowledge, due to the fact that we have handled maritime labor problems before and since the inception of the Maritime Labor Board, from 1934 to 1936–37, and nobody denies that there was considerable chaos in the maritime field, and big strikes, but the groundwork for the stabilization of our relations with our employers was laid in 1936–37, when management and labor found out they could achieve better results by sitting across the table and settling their problems and ironing out difficulties than by continuing a stiff-necked attitude on both sides, and since that time there has not been a major strike in the industry.

The genuine reason for the stabilization of labor relations in the maritime industry is because the shipowners and seamen have adjusted their difficulties, and certainly not because of the influence of the Maritime Labor Board.

Further, we can state with certainty that on the Pacific coast the representatives of the Maritime Labor Board are working very closely with the Congress of Industrial Organizations, and we do not believe it is the proper function of any Government body to even appear to take sides in interunion matters, but out here we know, and it is public knowledge, that they travel together, live in the same hotels, and as a matter of fact two of the Maritime Labor Board representatives on this coast traveled up and down publicly with Harry Bridges, head of the California Congress of Industrial Organizations and Matt Mehan, another Congress of Industrial Organizations official. This, taken in connection with the fact that the organizations under the control of Harry Bridges and his representatives have taken the lead in singing the praises of the Maritime Labor Board, as opposed to the United States Conciliation Service, certainly is not making maritime labor as a whole view the Maritime Labor Board with unprejudiced eyes.

We feel that the continuation of this board is going to have a bad effect on labor relations in the maritime industry, not only because it will seek to do work which another Government department is charged with doing, but because it will be absolutely in the hands of untrained people who do not understand the seafaring industry.

In the Maritime Labor Board's plea for its continuance it cited the fact that it has some 4,000 contracts filed with them. The Department of Labor, which has handled the vast majority of maritime labor disputes are much more familiar with the agreements and when they expire than the Maritime Labor Board.

This Board was set up for the purpose of making a study of and rendering a report to Congress, about the time that Joseph Kennedy was head of the Maritime Commission. It has made its study, rendered its report last year in March. Whether the report is of any use is another matter. We do not believe so, and do not believe the report has contributed anything toward settlement of matters in the maritime industry, as they were pretty well under control long before the Board was even set up.

However, this Board now seeks to make itself permanent, and if it succeeds in so doing, it will be dual to and duplicating the work of the United States Conciliation Service of the Department of Labor.

We therefore sincerely urge that H. R. 4107, as passed by the House, be not passed by your honorable body.

Respectfully,

HARRY LUNDBERG,
Acting President, Seafarers' International Union of North America,
Secretary-Treasurer, Sailors' Union of the Pacific.

I should now like to add a few statements of my own to this. I was present at the hearing yesterday. From listening to the testimony given by representatives of the Maritime Labor Board, one would get the impression that the maritime industry would just fold up if this Board were not continued. One can hardly blame the representatives of the Maritime Labor Board for fighting for their jobs, because if Congress does not continue their board, they will possibly have to go to work.

The Maritime Labor Board, in its own report to the President and to Congress on March 1, 1940, on page 20, under "Amendments to section 1012," said:

The Board's mediatory experience and its studies and investigations confirm the wisdom of the Congress in establishing a specialized agency for the adjustment of disputes and the stabilization of labor relations in the maritime industry. The realization of the objectives of the policy of the United States as declared in section 1001 of title X, requires, in the judgment of the Board, the continuation of a specialized governmental agency to act as the exponent of the public interest at least until such time as experience has fully demonstrated the ability of maritime employers and employees to insure the continuous flow of water-borne commerce through the systematic application of the practices and procedures of collective bargaining.

We feel that we have had that since 1937, and even before.

I want to quote just one paragraph from Mr. Lundeberg's statement:

The genuine reason for the stabilization of labor relations in the maritime industry is because the shipowners and seamen have adjusted their difficulties and certainly not because of the influence of the Maritime Labor Board.

We maintain that the Maritime Labor Board cannot deny that there have been stable relations between the unions and the employers, therefore bearing out the point that they are not needed.

They raised the point yesterday about public interest. This Board said that someone must look out for the interests of the public besides the shipowners and the unions. The Board states that it is doing just that for the public and that only a Government agency is best qualified to look after the public interest. We agree in part. But long before the Maritime Labor Board was established, the unions and the employers chose the Government agency which was an old established Government agency, namely, the Conciliation Service of the Department of Labor, which is certainly a Government agency capable of looking out for the interests of the public.

We feel that the Maritime Labor Board is not necessary, as it is only duplicating and sometimes interfering with the Conciliation Service, which has been in the field for a good many years and, in our opinion, knows its business.

Some people may accuse us of being stooges of the shipowners or of the Conciliation Service of the Department of Labor, but we feel that the record will speak for itself. For example, at present better than seven-eighths of the maritime industry have clauses in their contracts which require the services of the Conciliation Service of the Department of Labor in the event the union and the company cannot agree. Certainly that alone should be reason enough for anyone why the Maritime Labor Board is not needed and that the present set-up between the unions, employers, and Conciliation Service is the most satisfactory.

Further proof is that in the year 1937, before the Maritime Labor Board was set up, practically all contracts called, when necessary, for a Government agency, namely, the Conciliation Service. All the 1937 contracts had this particular clause in them. I have here contracts that cover all the maritime unions, and of them all, only one did not call for the Conciliation Service; it called for a Federal judge. That was in 1937.

Since then, in 1938, 1939, and 1940, the unions and the employers have agreed to continue to use the Conciliation Service of the Department of Labor on contracts covering better than seven-eighths of the maritime industry.

We have heard a number of people talk about the Railway Act, but we have checked into that, and I want to state this: Everyone knows

of the stability there is in the railroad industry. Why is that? For one reason, the unions and the companies in the railway industry were in favor of the Railway Labor Act, which established a Board. The unions and the employers in the railroad industry practically drew up the bill creating the Railroad Board, and Congress gave it to them.

Now, take the problem of the marine industry. Practically all the unions and employers have shown and stated that they do not want the Maritime Labor Board. So, if you want stability in the marine industry, why don't you give the employers and the unions what they are willing to accept—the Conciliation Service of the Department of Labor? We certainly have provided for them in all of our contracts, and we have had experience with the Conciliation Service. We are satisfied with it, and we are willing to continue with it.

We certainly do not believe that the Maritime Labor Board is capable of handling our affairs. We have reasons to distrust them, and we do not intend to use them in the future. We intend to carry on the practice we have been following for years. We have always dealt with the Department of Labor, and in all cases we have been represented by their service.

That is all I hav to say. If there are any questions I shall be glad to answer them.

Senator RADCLIFFE. Thank you, Mr. Weisberger.

STATEMENT OF BJORNE HALLING, SECRETARY, CONGRESS OF INDUSTRIAL ORGANIZATIONS MARITIME COMMITTEE

Mr. HALLING. My name is Bjorne Halling. I am the secretary of, and representing the C. I. O. maritime committee, which is composed of the following unions: (1) The National Maritime Union. (2) American Communications Association, marine division. (3) National Marine Engineers Beneficial Union, the spokesman for which you have just heard. (4) International Fishermen and Allied Workers of America. (5) Marine Cooks' and Stewards' Association of the Pacific. (6) Inland Boatmen's Union of the Pacific. (7) International Longshoremen's and Warehousemen's Union.

The total membership of these unions is approximately 140,000.

First of all, I want to say that any impression created by the testimony of Mr. Burns, Mr. Foisie, or Captain Peterson that they spoke for any of the C. I. O. unions is incorrect. If they spoke for any union, it is not for any C. I. O. union.

The creation of the Maritime Labor Board was the result of agitation in Congress by employers in the maritime industry. For years employers have been active in Congress, first to get subsidies and, after the establishment of the unions, to get restrictive legislation in maritime labor matters; to have the Government help them keep control of employees in the maritime industry.

The creation of the Maritime Labor Board, I believe, was a compromise between what the employers wanted, and what the unions did not want. The unions, at the time the Maritime Labor Board was created, were not in favor of having the Board, were not in favor of having anything that would operate as a compelling force on labor relations in the industry. The final language in the act that created the Board was such that we felt it was an instrument

to be feared by the unions, by labor in the industry. We have called upon the Maritime Labor Board to enter our negotiations with our employees, to come in when we have been unable to reach an agreement with them.

Another duty that the Maritime Labor Board was given was to make a study of labor relations in the industry; to determine what was wrong with the industry. I don't think there is anyone who will say that there is nothing wrong in the maritime industry or that there has not been something wrong for a long, long time. I think that Mr. Seehorn yesterday in his testimony touched on what is really wrong in the industry. That is, the suspicion that labor relations in the industry date back to the Middle Ages, or before that, has not been changed by modern ideas as to the proper relationship between an employer and an employee, has not changed with the times, not really since the time of the Phoenicians.

We have, for instance, in our laws today the provision that every man is entitled to so much salt pork and so much bread, et cetera. Of course those laws are not any good today, because the employers would not think of attempting to give them effect. Food is not cooked and distributed today individually. It is all cooked in one place and dished out through one place to the crew as a whole, and not as individuals. But I think it illustrates how antiquated some of our laws are, and what the suspicion of labor relations in the industry is; that suspicion, in my opinion, is responsible to a large extent for the reluctance on the part of the employers to enter into collective bargaining in good faith. I think the employers—not all—but quite a few of them, are extremely reluctant to enter into collective bargaining in the true spirit. The situation is better now than it has been. As a matter of fact, the last 2 or 3 years have shown considerable improvement. I think more employers are accepting the fact that the unions are here to stay and are dealing with them in good faith, but there are still some employers who have the notion that this antiquated law can be used, and various other restrictive rules can be made and enforced to break the union in the industry.

I think the study made by the Maritime Labor Board is very fine. I think it pointed out a lot of things which have been responsible for the chaos existing in the industry. I think the Board should be given an extension of life for 2 years, as provided for in H. R. 4107, in order that they may make a further study in the industry, and in order that their recommendations may be acted favorably upon by the respective committees in the House and Senate. I think if this is done our ideas on maritime labor relations will be brought up to date, up to the standard of ideas we have set for the rest of the labor movement. It will do much to remove difficulties which we have had in the industry, and which have been a source of trouble. I do not think that anyone believes that those difficulties have arisen because there are bad people in the industry—both employers and employees—that is, particularly bad people. I believe that anyone who has that view is off the track. I think the real reason is to be found in these antiquated laws, which in time have created an idea in some employers' minds that you don't have to treat labor in our industry as it deserves to be, and is being treated in other industries. That is all I have to say.

Senator RADCLIFFE. That concludes, with the exception of Dr. Bloch—and I will mention that in a moment—the list of witnesses who have asked to be heard. Is there anyone here who has not testified and who desires to make a statement?

Mr. BLOCH. I made a statement yesterday, but I understood we were to have an opportunity to answer what was said here this morning.

Senator RADCLIFFE. That is the desire of the committee, that every interested party be given an opportunity to be heard, and to make any additional or supplemental statement which he thinks may be desirable. It was my thought that such supplemental statement be filed early next week, and, in the meantime, the record will be written up.

Mr. PETERSEN. Will you fix a time limit in which these supplemental statements may be put in?

Senator RADCLIFFE. It depends a little on how much there will be. I had in mind Tuesday next.

Mr. PETERSEN. Then from now until next Tuesday we may put in any additional statement we wish?

Senator RADCLIFFE. I would say so. It occurred to me that next Tuesday we could go on with these hearings, that is, give anyone an opportunity to make any supplemental statement he wishes, or to give anyone who has not appeared an opportunity to appear at that time. The committee is very desirous to give the fullest opportunity for discussion.

Mr. WEISBERGER. There are a lot of telegrams and communications sent in by various unions and various ships' crews in connection with this matter. Will they be printed in the record?

Senator MALONEY. I shouldn't think so, but I should think that if any of the owners are going to be permitted to testify or furnish statements by mail, it is a fair request. I think, however, we ought to come to a conclusion of this hearing without too much delay. I think we are establishing a bad precedent in permitting persons who have not yet appeared to come in here next week, and for the first time testify. No one here has been deprived of an opportunity to be heard. No one has been restricted, and I think it is an unusual procedure to permit parties to come in here next week, and for the first time give their views. I am, of course, in favor of a full opportunity for discussion; however, this hearing should be brought to a conclusion.

Mr. PETERSON. I don't think we have anything in the way of a supplemental statement to offer. However, it is possible they may wish to file further statements or provide additional information or data in the way of a brief between now and the time of the deadline; therefore I asked when that was so that we might know and be governed accordingly. I don't expect we will have any further statement.

Senator MALONEY. Mr. Chairman, I think everyone has been given a full and fair opportunity to be heard. We have heard everyone who desires to be heard, given them all the time they wanted, and I don't see why, unless there is some reason, the hearing should not be closed right now.

Mr. BLOCH. You will please recall that we asked for an opportunity to appear again and answer some of the arguments presented in opposition to the bill. I sincerely hope that we will have that opportunity to appear and answer some of the statements which have been made.

Senator MALONEY. How did it occur that you testified before the opposition? Was it your desire to be heard first?

Mr. BLOCH. No.

Senator MALONEY. It was rather an unusual procedure.

Mr. BLOCH. It was the desire of the chairman.

Senator MALONEY. I am sorry.

Mr. BRUERE. There is one statement I wish to make. Reference has been made here to the fact that these hearings involve a discussion of controversial methods, in connection with which certain statements have been made for the record. We feel that it is not in the public interest that we should discuss those publicly, and we are not discussing them. We should like, however, to have an opportunity to discuss those matters with you, not by way of rebuttal or dissent, but by way of presenting factual material, and we should, of course, be guided by you as to the proper way that material shall be presented.

Senator RADCLIFFE. Senator Maloney is entirely correct in stating that the suggestion that those who desire to be given a further opportunity to be heard have such opportunity, is unusual. I was personally especially desirous that be done because of some rather special circumstances connected with this matter, that there should be the fullest opportunity for everyone to be heard, and, personally, I feel that I want to be sure that every matter which has been brought up has been tested and examined as carefully and fully as possible. I shall discuss this matter with the other members of the subcommittee to find out their wishes with respect thereto, as to what they desire shall be done, and we will then inform you as to whether or not there will be any further formal hearings or whether we will act on what we have before us. Personally I want to be sure that everyone has had the fullest opportunity to present his views.

Senator MALONEY. I want to say for the record I share your view. I don't recall that any witness was shut off. Everyone had all the time he apparently wanted.

Senator RADCLIFFE. That is certainly true. Everyone was permitted to testify without any effort to curtail him in any way.

Mr. BLOCH. I don't want to appear obtrusive. I do feel it would be in the interest of all concerned if the Board members, since they appeared first, be given an opportunity now, or at any time you wish, to respond to some of the statements that were made by witnesses here at this hearing. I think you will find the question of factual material involved, which will be submitted to you, decisive one way or another in determining whether the Board has been efficient or effective, and whether or not the Board has carried out the mandates and purposes of the act. Without any such statement I feel the record will be incomplete, especially since some of the witnesses have mentioned personally the names of members of the Board. I believe that such members should be given an opportunity to present their statements in answer thereto.

Mr. BURNS. If Dr. Bloch is given permission to testify again, it may well be that his statement will raise an issue of accuracy which will cause me to suggest that I or some other witnesses should feel obliged to make another statement. I think that would be most unusual and burdensome for all concerned. It is not unusual at the conclusion of such a hearing to set a date, within a few days, and say that within that time the committee will be glad to have any written statement, either by way of a statement of fact or in briefs, and that such additional information will be considered by the committee. I think if that is done no one can complain about being deprived of having a full opportunity of expressing his views.

Senator MALONEY. I think you are quite right, Judge Burns, but I think that each witness who has appeared will probably want to do that, and we will be doing this all over again.

Mr. BURNS. I suggest that the committee now say the hearing of oral testimony is concluded, and then set a date—say next Tuesday—on which further written testimony will have to be submitted, and that will be the record on which the committee will have to make up their minds.

Senator RADCLIFFE. Gentlemen, you will be advised in regard to this matter. Personally, I know the procedure is unusual, but I am in favor of giving those who desire to come before the committee an opportunity to go into a general discussion of the matter, and an opportunity to answer specifically any questions which have been raised, but that is a matter which I will discuss with the members of the subcommittee. I will tell you, however, that you will have till next Tuesday to submit the type of statement which has been discussed.

Senator MALONEY. While I insist it is most unusual, if it is your desire, as chairman, to permit the Maritime Labor Board, and Judge Burns, the only ones who have made the requests, to submit a supplemental statement for printing in the record, I am entirely willing that should be done, but I do think there should be a limitation in time in which it shall be done, so that the hearing may be concluded. Does that suit you, Dr. Bloch?

Mr. BLOCH. Anything you say will, of course, suit us, but I frankly feel tht we should have an opportunity to appear before the committee, either here or in executive session, because you will recall I asked to be given an opportunity to answer any statements which might be made against us, and, I believe, the chairman said we would have such opportunity. We, as public servants, I believe are fully entitled, if I may so state, to answer any charges which are made against us at these hearings. The matter is quite important, and gentlemen have been making very generous statements without support of any fact; and it is quite insufficient to submit a written statement in answer to such charges. I, therefore, ask that you gentlemen permit us an opportunity to appear before you and answer the accusations and to submit, if necessary, to your cross-examination.

Senator MALONEY. Are you prepared to go ahead now?

Mr. BLOCH. Yes.

Senator MALONEY. Why not go ahead now?

Senator RADCLIFFE. I have no objection.

Senator MALONEY. I think he is right. He has a right to answer, but I think he was in error in testifying first.

Senator RADCLIFFE. Will you take the chair (to Senator Maloney)?

(Thereupon Senator Maloney assumed the chair.)

Senator MALONEY (presiding). Go ahead. Have you any idea how much time you will require?

Mr. BLOCH. I would like at least half an hour, and as much more as possible.

Senator MALONEY. How much time altogether?

Mr. BLOCH. An hour.

Senator MALONEY. Can you finish by 12 o'clock?

Mr. BLOCH. I will try.

Senator MALONEY. And it may be understood that unless some objection is made on behalf of the committee you may file a statement for the record sometime later, Judge Burns.

Mr BURNS. I ought to have it in by Tuesday.

Mr. HAWK. I would like to say I testified and mentioned Mr. Bloch's name, and if there is going to be any testimony contradicting the facts which I presented, or if it will be said they were not specific enough, I would like to have an opportunity to present additional facts in rebuttal to what he says.

Senator MALONEY. Well, that is where we get into difficulties, but you will also have two days, subject to the approval of the committee, to file your statement.

Mr. HALLING. May we have the same privilege?

Senator MALONEY. Subject to the approval of the committee, you also have 2 days.

FURTHER STATEMENT OF LOUIS BLOCH, MEMBER OF THE MARITIME LABOR BOARD

Mr. BLOCH. Mr. Chairman, I want to address myself today particularly to the testimony presented to your committee by Mr. Foisie and Mr. Burns, representing the ship operators. I want to make it clear at the very outset that as far as I am concerned there is no personal feeling at all in the situation; that I have high regard for their position. They have taken that position for a long time in the past, and I didn't expect them to take a different position at the present time. I believe that the facts will prove that Mr. Foisie's testimony is unsupported by evidence and that he merely generalized; further, that had he stuck to the facts they would not have supported his generalizations.

Mr. Foisie's statement that the Maritime Labor Board has made no contribution to maritime labor stability in the maritime industry is not supported by the facts. That is a very significant charge, which, if true, would fully justify his position that the Maritime Labor Board should no longer continue to exist. But Mr. Foisie did not present a single case which was handled by the Board in proof of his contention. In fact, he led you to believe that the Board handled no cases whatsoever. That was theh idea he endeavored to convey, that nobody, not a single ship operator on the Pacific coast, or elsewhere, wanted to deal with the Board. It would appear from the testimony presented by him that all the Board was doing was sitting here in Washington, watching the procession go by. Nothing is further removed from the truth, Mr. Chairman. The policy of the Board has been to send out its media-

tors in the field to handle cases when requested by employees, or employers, or both, and the record will show that there were numerous requests by employers and employees and jointly by employers and employees, for the services of the Board.

But Mr. Foisie not only spoke in genertal terms, but saw fit to refer particularly to that member of the Board who came from San Francisco, meaning myself, intimating that Bloch has done nothing at all when he came out there, and that Bloch actually contributed little or nothing by his presence on the Pacific coast. As a matter of fact, Mr. Bruere was also out there engaged in the handling of certain cases, and Mr. Seehorn was likewise there. It is quite true I was there, handling some of the important cases, because it was familiar ground to me. I know the important officials of the employer groups and the important officials of the unions and I was generally familiar with conditions on the Pacific coast. It seems only fair and proper that we examine the particular cases which I handled for the Board on the Pacific coast and then let you decide on the basis of the evidence presented, and the record, whether or not the Board was or was not instrumental in bringing about peaceful labor relations on the coast.

If you examine the report of the House Committee on Merchant Marine and Fisheries and the report of the executive hearings of that committee, you will find that at those hearings I made a statement that the Maritime Labor Board was instrumental in averting a Pacific coast strike in 1939, and I read into the record the agreement which the Board brought about as a result of its efforts. Mr. Foisie didn't appear yesterday, Mr. Chairman, to contradict that statement. That was submitted to the House Committee on Merchant Marine and Fisheries and, as a matter of fact, when that evidence was submitted Mr. O'Brien said, "Why, if there was nothing else the Board did, that was sufficient reason for continuing the Board." That was because he remebered very well what disastrous results might follow from a Pacific coast strike.

Now, Mr. Chairman, it is altogether unfair to ignore this case. It is not the only one, I will mention some more. It is not only unfair to us, as individuals, who are charged with the duty and responsibility which we have been and are trying to discharge to the best of our ability, but it is unfair to you gentlemen, because they are concealing and withholding facts from you in their testimony, facts which bear directly upon the case. It is also unfair because the public on the Pacific coast, as I shall be glad to show you, has been pleased about the work of this Board in this particular case. Every newspaper in San Francisco publicly commended the Board and the present speaker for averting a strike on the Pacific coast.

Now, I request that I be given permission to read into the record a short agreement which we claim, and we know, has resulted in averting a Pacific coast strike of longshoremen which would have involved all seafaring men in a strike from Seattle to San Diego. Mr. Chairman, if you recall, those strikes last a long time. Ninety days is about the average. That was the case in 1934, 1936. In 1939 we averted a strike. Here is the agreement.

The following agreement between the Waterfront Employers Association of the Pacific coast and the International Longshoremen's and Warehousemen's Union has been reached through the mediatory efforts of the Maritime Labor Board:

SECTION 1. Both parties agree that it will be impossible to arrive at a mutually satisfactory agreement before September 30, 1939.

That was the time when the agreement would have expired.

SEC. 2. Both parties agree to continue the existing agreement, which expires September 30, 1939, in full force and effect after September 30, 1939, except as herein otherwise provided.

SEC. 3. Either party may serve a 60-day notice in writing, any time after October 1, 1939, of its desire to terminate the existing agreement. When such notice has been served, the existing agreement will terminate at the expiration of the 60-day period, except as provided in section 5.

SEC. 4. Both parties agree to resume negotiations, in good faith, as soon as convenient to both parties, after the signing of this agreement, with a view to arriving at a mutually satisfactory agreement, with the Maritime Labor Board acting as mediator. It is further agreed that pending the outcome of these negotiations the working and dispatching rules, and where such rules have not been officially adopted practices which were in effect on September 15, 1939, will continue. The practices relative to liftboards and the mechanical trimmer now in effect will also continue pending the outcome of these negotiations. There will be no stoppage of work but in the event of a dispute such dispute shall be settled in accordance with the agreement.

SEC. 5. If the union, at any time prior to the expiration of the 60-day period, begins or is conducting a vote of its membership upon the acceptance or rejection of any proposal or proposals directly arising from the negotiations, or upon the further extension of negotiations, the 60-day period shall be extended for a further period of 21 days and the agreement will terminate 81 days after the 60-day notice has been served by either side.

Waterfront Employers Association of the Pacific coast, on behalf of Waterfront Employers of Seattle, Waterfront Employers of Portland, Waterfront Employers Association of San Francisco, Waterfront Employers Association of Southern California. A. Boyd. F. P. Foisie.

International Longshoremen's and Warehousemen's Union. H. R. Bridges, Jack Price, Rosco G. Craycraft, Tom Brown, W. A. Downey, Roy M. Donnelly, Germain Bulcke, Matt Meehan.

Witnessed by: Louis Bloch, member, Maritime Labor Board; W. T. Guerts, mediator, Maritime Labor Board.

I am not going into detail to tell you all about that case, but if you would like to examine our file, here it is—part of it. We didn't go out to settle that strike on September 30 when the existing agreement was to expire. We were there 6 weeks ahead of time, and that is how we operate. When we think there is danger of an expiring agreement not being renewed, we have men in the field before the agreement terminates. We don't wait to be called by either the employer or the employee. We make a study of the situation and are there on the ground ahead of time. That is exactly the type of service which a special agency must perform. When you are given a special job to see to it that peaceful labor relations be established in a given industry, and your job is that and nothing else, then you watch every possible danger signal to be sure that you will be there before the damage is done. We were there before the deadlock came. We came there and we kept in touch with the employers and employees, and when the deadlock did take place we offered our services, which were accepted by both sides. Indeed, they were accepted by Mr. Foisie's organization conditionally, but nevertheless accepted, and the result was this agreement.

Senator MALONEY. Do you think it was of great benefit to both parties?

Mr. BLOCH. To both parties, and to the public, the businessmen, and all the people on the Pacific coast; and, if you don't think so, all you have to do is to read some of the comments in the newspapers about that situation.

Senator MALONEY. I had in mind that both parties were opposed to the continuation of your Board in spite of what you refer to as the very successful work on your part.

Mr. BLOCH. Both parties, employers and employees alike, from time immemorial have wanted to be left alone in their negotiations. They wanted no interference in the making of their agreement; they want to fight it out themselves. They don't like the idea of any governmental agency injecting itself into what they consider their own affair. They don't and never did like it, and it takes a long time to educate them to the idea that the public does have a stake in the situation and that the public must be considered; they don't want the public to be represented in the negotiation. That is true particularly when the industry is not well organized; where collective bargaining has not been established over a long period of years; where the process of negotiation and mediation is still in a state of flux. This is especially so when the law is such as title X, which requires the parties to arbitrate when they are unable to bring about peaceful mediation and, as a matter of fact, Mr. Chairman, the employers as well as the employees always try to make a mediator or board member an advocate of their particular cause. When you come into a case they will accept you and say, "All right, we will take you, but this is our position, and that is our position, and we think this is the right position, and we insist that you make a public statement to that effect," and if you refuse to do that you are no good; and, in all probability, they will send wires to Senators and Congressmen attacking the Board member for failure to live up to the public interest.

If you wish to examine our records they will bear me out. Mr. Foisie came in time after time, insisting that I make a public statement that his position was right. The union wanted us to do likewise, to say that their position was right. We refrained from doing either. Sometimes we do make a public statement, when we feel the public interest requires it, but very rarely. I said yesterday and repeat today that neither the employer nor employees are the guardians of the public interest. If I may put in the record a statement, in the form of an excerpt from a San Frencisco newspaper, it will, I am sure, be helpful to the committee.

Senator MALONEY. I don't want to cluttter up the record with a great many praiseworthy editorials. To do so would invite possibly others less complimentary.

Mr. BLOCH. I think there are already such. Mr. Foisie said some things not very complimentary. This is an editorial from the San Francisco News of September 28, 1939:

> The understanding just reached between the Waterfront Employers and Longshoremen's Union is of incalculable benefit to the Pacific coast and the Nation.
>
> Deserving of heartiest acclaim are the employer and union officials and Dr. Louis Bloch, of the United States Maritime Labor Board, for having worked out a sensible procedure.

Now, that is not the only case. In March 1939, the Marine Cooks and Stewards of the Matson Navigation Co. tied up 3 ships of the company, in volving 800 men, in a strike. We weren't asked to go into that case; we asked the representatives of the union in Washington whether or not we should take a hand in it. We were told to wait a week; something might happen. In the meantime the boats were tied up. The Board felt the public could not afford to have such a dangerous situation. The owners could apparently wait; they were not insisting on anything being done. I arrived out there the next morning and immediately got into conference representatives of all sides, which conferences continued for almost 48 hours, at the end of which time this strike was terminated. Did Mr. Foisie bring in that case and say, "Here is a case where the Board was effective"? In the Matson Navigation case the union was at fault. They had a contract and had struck in violation of it. I so told the union. Mr. Foisie finds fault with me because I didn't make a public statement to that effect. Had I done so we couldn't possibly have settled the strike. In sitting down with these men in the settlement of their difficulties you cannot antagonize either side, employers or employees, and hope to gain any appreciable benefit by it. We try to be friendly with all sides. That is the job we have to do. I must say they struck because they didn't like the sanitary conditions on the ship; the company said they were willing to make the changes, but the men couldn't agree on them. Finally the changes were made.

Next was the strike of the dock checkers against the American-Hawaiian Steamship Co. Did Mr. Foisie mention that case? No; he didn't. He didn't think it sufficiently important. But we did settle it. The fact will show that through the efforts of the Board the strike was terminated sooner than it would have been were it not for our efforts. The record will show that the Board secured an agreement to arbitrate differences involved in that case.

I am not going to take the time to read them now, but we have the agreement here. May I insert it in the record?

Senator MALONEY. You may.

(The agreement referred to is as follows:)

SAN FRANCISCO, CALIF.,
June 26, 1939.

AGREEMENT TO ARBITRATE

The following agreement to arbitrate has been reached through the mediation efforts of the Maritime Labor Board:

1. Both parties shall mutually request the services of Dean Wayne L. Morse, distinguished full-time arbitrator, already prepared to function in connection with a number of other maritime contracts.

2. Arbitrator Wayne L. Morse shall decide how work shall be resumed, including the question as to whether the 10 clerks shall return to work for the American-Hawaiian Steamship Co. as preferred daily clerks or as monthly clerks.

3. The arbitrator shall decide whether the Dock Checkers Employers Association or the Ship Clerks Association, Local 1-34, I. L. W. U., or both, have been in violation of the agreements as a result of this dispute.

4. The arbitrator shall decide whether the 10 clerks involved in this dispute shall be classified as preferred daily clerks or as monthly clerks.

5. The arbitrator shall also decide if any issues other than the above are involved in this particular dispute and he shall render decisions on these issues.

6. It is also agreed that such other disputes as are enumerated in the letter addressed by the Dock Checkers Employers Association to the Maritime Labor Board, under date of June 24, 1939, except point (5) in that letter, shall be arbitrated by Wayne L. Morse, if in his judgment these disputes are arbitrable at this time.

7. The Ship Clerks Association, Local 1-34, I. L. W. U., and the Dock Checkers Employers Association agree to abide by the decisions of Arbitrator Wayne L. Morse upon all questions submitted to him under the terms of this arbitration agreement.

F. P. FOISIE.
GREGORY HARRISON.
HOWARD.
EDWARD WHELAN.
MIKE JOHNSON.
M. HENRY.

Witnessed by

LOUIS BLOCH,
Member, Maritime Labor Board.

Approved I. L. W. U., District 1.

H. R. BRIDGES.

Mr. BLOCH. Would that indicate the Board has contributed nothing toward the settlement of labor difficulties, or would it suggest they have done something in that direction? I would say this to you, Mr. Chairman, if I may, that the press thought the Board did a very good job there. To do that I would have to read excerpts from the papers praising Bloch and the Board.

Senator MALONEY. You have until 12 o'clock. You can read anything you like up to that time.

Mr. BLOCH (reading):

Louis Bloch, member of the Maritime Labor Board, last night announced conclusion of the water-front tie-up in this fashion:

"We are happy to announce that the efforts of the Maritime Labor Board to open the port of San Francisco have tonight culminated in the signing of an arbitration agreement by the Ship Clerks' Association, Local 1-34, I. L. W. U., and the Dock Checkers Employers Association. The signing of this agreement, which requires the arbitration of all pending disputes between the ship clerks and their employers, was witnessed by the Maritime Labor Board."

That was in the San Francisco Examiner of Tuesday, June 27, 1939.

And, Mr. Chairman, there is a newspaper in San Francisco known as the Daily Commercial News, something like the Wall Street Journal. In reporting this case they said:

Credit given Bloch, of Maritime Labor Board, for securing arbitration decision.

I will read you in part:

Last night at 10 o'clock the union-employer agreement was signed in the presence of Dr. Louis Bloch, Maritime Labor Board official, in the Hotel Whitcomb, agreeing to Wayne L. Morris, distinguished Federal coast arbitrator, to negotiate settlement of seven points at issue.

Would that suggest the Board did nothing? Would you like me to take up each and every case we had on the Pacific coast? I will be glad to do it if you so desire; not that I handled, but our men. I was mentioned; that is why I ask your kind permission to let me give you this evidence. Mr. Foisie mentioned a telegram from Governor Olson, signed by Bloch, and pointed out that we were partisan because it was made public. Let me explain that situation. As a matter of fact, here was a strike in the settlement of which we participated. Governor Olson appointed a committee of his own to handle that strike, and, as Mr. Foisie stated, the Governor rejected the proposal of his own committee, but accepted the proposal of the Maritime Labor Board, which was a proposal for arbitration. Later,

when I returned here, his representatives sent a telegram to the Board inquiring about our position, and we wrote back to the Governor's representative saying that his position was right, that it was our position. We didn't think he would give it to the press. As a matter of fact, we thought otherwise, but they did give it to the press. Are we to be condemned for that? If we had come out with a statement the employers asked us to come out with, we wouldn't have been condemned. The only statement I ever gave out was the statement against the union. And I can prove that if you wish.

Mr. Foisie says there is no need for a special board. Why have a board specially for this industry? He says there is no special board for the coal industry, the lumber industry, and so on. Well, the maritime employers came in here in 1938 and asked for such a special board. The Federal Government doesn't have millions and millions and millions of dollars invested in the coal industry, as it does in the maritime industry. It doesn't have such an investment in the railroads; nevertheless there is a special board in that industry. The Government is at the present time embarking on an unprecedented expansion of its merchant marine. The Government is vitally interested in having such a board, devoting itself, as it does, solely and entirely to the well-being of an industry in which this Government has an enormous investment. That is the answer to Mr. Foisie's question. The employers and the employees don't look at it from that standpoint, but the public does.

Yes, indeed, if they could come in here and say, "Why, sure, but conditions are worse now, or as bad as they were." If they could say that we wouldn't attempt any explanation, but what are the facts? The facts are, today, that strikes have declined about 40 percent during the time the board has been in existence, and the amount of time lost as compared with the preceding 3 years has diminished 79 percent. Very well, then, Mr. Chairman, there were chaotic, turbulent conditions in the maritime industry prior to the establishment of the Board. Now, with the Board functioning, strikes have declined 40 percent and time lost by 79 percent. Nothing is said as to that. We submit that if the Board is to be charged with what are said to be shortcomings it should get credit where conditions are reversed; and I say it is entitled to credit for what has been done, particularly in the light of the report to the Committee on Merchant Marine and Fisheries and in the light of other reports which are available.

The opposition to the board is not based on facts; it is based on a line of reasoning the basis of which is that they don't want us. All of a sudden they have developed a great fondness for the Conciliation Service of the Department of Labor. I well recollect when the same gentlemen were damning the Labor Department up and down the coast, where they said that Department was no good. When you put in a law contemplating more than moral suasion, under which they must bargain collectively, sign agreements, and arbitrate, where there is no penalty, but where they must arbitrate, they don't like that. It is the same objection, in effect, as was to the National Labor Relations Act, and which was recognized by Congressman Ramspeck at the hearing. They are opposed to the recommendation of the board. They have not come here and said, "We don't like this particular point because we think it unwise"; that is not their position at all. The Board has made a study of conditions in the industry at the direction of Congress, and,

we submit, that in doing its duties in the meantime it has been efficient. The Committee on Merchant Marine and Fisheries believes that that study should be made. We hope you believe likewise. We think it extremely important if the Government is to spend millions and millions—possibly half a billion dollars—on ships, that the underlying conditions in that industry should be studied and studied carefully. Mr. Foisie said he was opposed to the Board the moment it was named; the moment the members of the Board were announced. Does that indicate an attitude of cooperation with the Government of the United States, with the Congress that enacted the legislation, and with the Senate committee which approved the nominees? Or does Mr. Foisie take the position that appointees to the Board should be made not with the advice and consent of the Senate but with the advice and consent of the shipowners?

It is probably not so convenient for the operators to take a similar position with respect to titles V and VI, which give them operating and production deficiency subsidies.

The impression given to you by these people was that this Board wasn't wanted by anybody. They say, "We have collective bargaining." What are the facts with respect to that? It is true enough, as Mr. Foisie says, they have collective bargaining, have had it since 1934; not 1938, but 1934. Yet, what does the record show? A bitter strike in 1936 under collective bargaining. In other words, strikes in 1939 under collective bargaining. Did the fact that there was collective bargaining insure proper labor relations? No. It takes time and wholehearted effort, and a desire on the part of all parties, including the representatives of the public, to insure peaceful labor relations.

But, as a matter of fact, the industry is not covered by collective bargaining. Tankers are 47 percent unorganized. It is only 28 percent fully organized under recognized unions, and 24 percent is under special unions, company plans, or certificate unions. As regards all types of ships offshore, 20 percent are not organized. Is it true that the industry is covered by collective bargaining? And, if it were, would that be an argument that the Board need no longer exist? If so, then the Railway Labor Act would have to go. Would you say that should occur? I don't think so.

We know of many danger signals which require attention. My time doesn't permit me to go into them; but these gentlemen do not see the over-all picture; they see their own particular bailiwick. My experience has been 100 percent with the policy expressed by Congress in favor of collective bargaining, but from their testimony it would appear that nobody ever went to the Board. What are the facts? Out of 175 cases handled by the Board to date—it was 152 when we testified before Charman Bland—34 were requests from employers, some, not all of them, members of these associations; 82 came from employees' unions; 15 were joint requests from both; and 31 from the office of the Board, and 13 came from other agencies by reference. These are the facts that speak louder than words.

I am not denying that the Conciliation Service has good men. We are not here to argue about that. But it would appear that our mediators, from the testimony presented, aren't much good. Yet, to begin with, they were selected from a very competitive civil-service list after an exhaustive examination; second, our mediator on the Pacific coast

was offered by the employers and employees the position as arbitrator for the port of San Francisco. Now, when the employers and employees have such confidence in a man that they would offer him the post of arbitrator for a port, would that suggest he is no good or that he is biased or prejudiced? Again I say facts speak louder than words.

If we had time we would insert in the record letter after letter—even from the S. I. U.—commending the Board when it did have something to do with a case in which they were involved. Mr. Foisie objected to the fact that the Board wouldn't make public statements. We don't condone illegal strikes; we never did. But we thought it the better part of wisdom not to make public statements because, as I said, we can't continue as a mediator and at the same time antagonize one of the parties. But we have many times told the union they were at fault. Further, I desire to point out that the arbitrator has held certain so-called illegal strikes to be legal strikes. There is some doubt whether all strikes termed "illegal" by shipping people are illegal in fact; and that is something to be considered. Oh, I could tell you more about it, but I only have 2 minutes now.

With respect to arbitration, Mr. Chairman, cases arise where the union wants to arbitrate and the employer does not; and cases arise where the employer wants to arbitrate and the union does not; cases arise where no one does. You make some enemies under those conditions; it is inevitable.

Mr. Foisie says my appointment was due to John L. Lewis and Harry Bridges. Now, I didn't ask John Lewis to endorse me, but he did. Incidentally, John L. Lewis endorsed Wendell Willkie. It so happens that Mr. Foisie didn't say that was anything against Mr. Willkie because Mr. Lewis endorsed him; but the fact that Lewis endorsed Bloch is something different. I didn't ask Mr. Lewis to endorse me; and the Longshoremen's Union endorsed me. They thought I was fair. I don't see anything wrong with that.

It is the theory of pressure they are following, intimidation, if you please. "You do thus and so, or we will go to the Concilliation Service. You do this and that or we will take it up with Congress." We have to understand that that is so in light of the difficulties involved in a difficult job.

In conclusion, I desire to present the following points:

Title X should be continued as is proposed in Chairman Bland's bill, H. R. 4107, because:

1. The facts show that both employers and employees have availed themselves of the services provided in title X.

2. The Board was instrumental in avoiding serious strikes and in promoting the orderly processes of collective bargaining.

3. Labor conditions have greatly improved during the 3-year period of the functioning of title X, to wit: Strikes decreased by 40.2 percent, workers involved by 47.2 percent, man-days lost by 79.4 percent.

4. The Board should be given an opportunity to continue its studies of maritime labor problems in order to assist the Congress in solving the problem of permanent stable labor relations in the maritime industry.

5. Opposition to the board is due to the unwillingness of its members to be used by either the employers or the employees to advocate

their particular causes. Public servants should not be penalized for carrying out public policy without fear or favor.

6. The Congress should be given an opportunity to study the report and recommendations of the Board made on March 1, 1940, and other recommendations which they might make in the interest of the public.

7. The American people have a financial interest in the merchant marine which is an adjunct to our national defense.

8. The Congress is embarking upon an unprecedented expansion of the merchant marine because of the present emergency. Title X should not be scrapped during the emergency.

9. The House Committee on Merchant Marine and Fisheries has approved H. R. 4107, and the House passed the bill without dissent.

10. The issue should not be decided on the basis of the present membership of the Board. It would take superhuman beings to administer title X without subjecting themselves to criticism from the interested parties involved in maritime labor disputes.

Sen. MALONEY (presiding). So that the record may be complete, there is a tentative understanding that Messrs. Weisberger, Halling, and Judge Burns may file supplemental statements. That is all subject to the wishes of the committee.

I would suggest to you, Mr. Bloch, that you keep in touch with the chairman of this subcommittee, Senator Radcliffe, especially in view of the fact that you may have a desire to be heard before the full committee and it is possible the full committee may desire to hear you.

(Whereupon, at 12 o'clock noon, an adjournment, conditioned upon the further action of the full subcommittee, was taken until Tuesday, May 20, 1941, at 10 a. m.)

(The following communications and statements were filed with the committee:)

MEMORANDUM SUPPLEMENTING TESTIMONY OF JOHN J. BURNS ON BEHALF OF THE AMERICAN MERCHANT MARINE INSTITUTE, INC. IN OPPOSITION TO H. R. 4107

The American Merchant Marine Institute, Inc., representing the greater part of Maritime tonnage under the American flag and representing nearly all the lines operating from the Atlantic and Gulf ports, is firmly opposed to the continuance of the Maritime Labor Board.

It is obvious from the legislative history of chapter X of the Merchant Marine Act, 1936, that the primary function of this Maritime Labor Board was intended to be that of mediation. Although it has other duties, such as collecting and recording labor agreements and recommending legislation to the Congress, it is extremely doubtful if Congress would have bothered to have created a new three-man agency were it not for the problem of labor disputes and the Congressional belief that some form of administrative action was necessary to cope with the distressful labor situation which had existed for many years prior to 1938.

The mediation activities of the Maritime Labor Board have been conspicuously unsuccessful. All the committee has to do to appreciate that fact is to note that not one employer or employers' organization urged that the Board be continued. Moreover, representatives of very many labor organizations most forcefully urged that the law be not extended.

The very concept of mediation requires that the mediating agency be persona grata to both parties to a dispute. Even if the Maritime Labor Board had received 100-percent support from labor and even if the labor organizations who have an interest in the maritime field had been enthusiastically in favor of making this Board permanent, it would nevertheless be a wasteful and useless gesture to continue its members in office because of the mistrust and lack of confidence which is implicit in the opposition of practically the entire maritime employers' group.

It was brought out during the hearings that at least 80 percent (and in our opinion this is a most conservative estimate) of the maritime industry is operating under collective-bargaining agreements. The present National Labor Relations Act is more than adequate to insure to the unorganized fraction of the industry its rights to collective bargaining. If this agency, which asks the Congress for this legislation, had by the administration of its powers earned that respect and confidence which is a prerequisite to successful mediation, there would have been found a willingness on the part of the industry to name the Maritime Labor Board as ultimate arbiter of its disputes. And yet, despite all the collective agreements in force, the Conciliation Division of the Department of Labor has been selected in almost every instance. So far as I know, the Maritime Labor Board is not named in a single collective-bargaining agreement as the party to which unresolvable disputes will be referred. This, I submit, is conclusive evidence of the fatal lack of the essential requirements for carrying out the congressional intent.

We make but one comment on the testimony of the Board members, and it is this: If the Maritime Labor Board had been as successful as it claims to have been, we would not be urging its discontinuance.

The report of the House Committee on the Merchant Marine and Fisheries gives seven reasons for continuing title X. Upon analysis they are found to be unimpressive and unconvincing.

The first reason given by that committee is "Labor conditions in the maritime industry have greatly improved since the enactment of title X and the creation of the Maritime Labor Board." It is true that improvement of labor conditions in the maritime industry coincided with the creation of the Maritime Labor Board, but that is a mere fortuitous circumstance. So far as the field of operations of the members of the institute is concerned, the relationship of cause and effect is utterly lacking. The comparatively peaceful state of labor on the North Atlantic and Gulf coasts is due entirely to the effective cooperation of the union representatives and the Honorable Frank J. Taylor, president of the American Merchant Marine Institute, Inc. These parties have resolved their difficulties during most trying times, and at no time have they felt that the Maritime Labor Board made any worthwhile contributions to the important task of keeping the ships operating.

The committee gives as its second reason, "The record shows that the Maritime Labor Board has been effective in mediating labor disputes in the maritime industry." This reason the employers on both coasts, as well as on the Lakes, vigorously deny. The impressive opposition of powerful labor unions shows further that the second reason cannot be supported in fact.

The third reason is as follows: "This is the only Government agency with which copies of all labor agreements are required to be filed and these have been studied by the Board with a view to promoting stable labor relations in the maritime industry." It is submitted that, in view of the Board's failure in the field of mediation, its success as a collector of contracts would hardly justify the expenditure of its annual appropriation. The collection and study of labor agreements could have been done by a few clerks of any committee of the Congress, by the Maritime Commission, by the Department of Commerce, or by the National Labor Relations Board, and the cost would have been negligible.

The fourth reason set forth by the committee is as follows: "The mediatory work of the Maritime Labor Board has embraced all principal seafaring and shore organizations." This is, on its face, not a reason but merely a statement of the law. The important thing is not what the law has stated that the Board should embrace but what has the Board actually done pursuant to the law?

The committee cites as the fifth reason the following: "The continuation of title X will afford needed time for the careful consideration of the report and recommendations of the Maritime Labor Board submitted in compliance with title X of the Merchant Marine Act, and an opportunity to the Board to continue its study of the maritime industry and on the basis of its added experience and knowledge be better enabled to submit further recommendations from time to time." Certainly Congress will not have a better opportunity to study the maritime industry merely because it continues the Maritime Labor Board; and if its mediating function is rendered nugatory by a lack of trust and confidence, it is extremely doubtful if it will have the experience which the House committee seems to believe it may secure.

The sixth reason is as follows: In these times of national emergency it would be unwise to discontinue the special agency charged with the duty of promoting

stable labor relations in the maritime industry." Here again the complaint of the maritime industry is that, although charged with the duty of promoting stable relations in the maritime industry, its contributions to that important social public objective can only be described as insignificant.

The seventh reason—"The Board considers peculiar problems of a specialized industry"—is strained. It is a statement of what the Board is supposed to do as an argument in favor of continuing its activities, but the issue before the Congress is what shows up in the account of its stewardship.

It has been intimated that the opposition on the part of the ship operators to the continuance of the Board springs from an opposition to collective bargaining. Such was the intimation of Member Bloch's testimony before your committee as well as his testimony before the House committee. That statement is false and unfair. A record of hundreds of disputes successfully negotiated during the most trying period shipping has seen since the last World War is the clearest kind of evidence that collective bargaining in all its implications has become the accepted basis for handling the problems of labor in the maritime field.

We wish to urge again our position, not out of personal antagonism to any members of the Board, but merely because we believe that our interests and the interests of the public require that the useless and wasteful duplication of the Maritime Labor Board be no longer permitted. We respectfully urge therefore that this bill be not enacted.

AMERICAN MERCHANT MARINE INSTITUTE, INC.
By JOHN J. BURNS, *General Counsel.*

[Telegram]

NEW YORK, N. Y., *May 14, 1941.*

Hon. JOSIAH H. BAILEY,
Chairman, Commerce Committee,
Capitol Gallery Floor, Northwest Corner:

Understand your committee on commerce conducting hearing today on H. R. 4107 which provides for a 2-year extension of the Maritime Labor Board. Urgent business prohibits my presence personally to testify against this bill. I speak for the International Longshoremen's Association of the American Federation of Labor representing 80,000 workers employed in the maritime industry on the Atlantic and Gulf coasts, and in the Great Lakes and Northwest, and I strongly urge that you and your committee refuse to approve this bill. Since the creation of the Maritime Labor Board, the International Longshoremen's Association has consistently declined the services of this Board and will continue to do so. In the future, when mediation and arbitration of labor disputes involving us and our employers have become necessary, the International Longshoremen's Association and its employers have found the services of the commissioners of the conciliation department of the United States Department of Labor to be skillful, helpful, and adequate. We cannot understand the necessity or desirability of continuing at the taxpayers' expense an agency which unsuccessfully attempts to duplicate the functions of the United States Conciliation Service when labor, employers, and the public are not requesting such a board. I sincerely hope that Congress will disapprove H. R. 4107. Inasmuch as I am unable to appear personally, I respectfully request that this statement be made a part of the record in today's hearing.

JOSEPH P. RYAN,
President, International Longshoremen's Association,
265 West Fourteenth Street.

WATERFRONT EMPLOYERS ASSOCIATION OF THE PACIFIC COAST,
FEDERAL RESERVE BANK BUILDING,
SAN FRANCISCO, CALIF., *May 21, 1941.*

Hon. GEORGE L. RADCLIFFE,
Chairman, Subcommittee on Merchant Marine,

SIR: The opportunity to reply to the rebuttal testimony of Dr. Bloch is appreciated, even though the reply will be brief.

Dr. Bloch introduced his statement with the incorrect charge that I had led your Committee to believe the Maritime Labor Board had handled no cases whatsoever on the Pacific coast. Dr. Bloch then offers in rebuttal three instances in which the Board has been active on the Pacific coast.

My statement is not susceptible of Dr. Bloch's construction. I did state and I repeat that the Maritime Labor Board has been more hurtful than helpful to industry on the Pacific coast.

I have no desire to minimize the fact that in the instances mentioned by Dr. Bloch the Maritime Labor Board was active.

In his testimony he refers to a memorandum agreement in 1939 between Pacific coast employers and longshoremen which provided that the agreement then in effect would be extended for the purpose of negotiating a new contract, with the Maritime Labor Board acting as mediator. The Maritime Labor Board participated in the conferences in which this extension agreement was made, and its name was written in that agreement at the insistence of Mr. Bridges representing the International Longshoremen's and Warehousemen's Union, at a time when that union expressly announced its intention of excluding the Conciliation Service of the Department of Labor from activities in connection with the longshore agreement.

It is our belief that the union leadership deliberately injected the Maritime Labor Board into our relationship for that purpose, and the Maritime Labor Board was accepted solely because of the insistence of the union. The fact is, however, that after the extension agreement was made, the new longshore agreement was negotiated and signed without the services of the Maritime Labor Board.

In two other instances mentioned by Dr. Bloch, one in connection with a strike of clerks in San Francisco and another involving marine cooks and stewards at the same place, both in direct violation of collective bargaining agreements, the Board was active in the unions' return to work in accordance with their respective agreements.

I repeat the statement made in my testimony that the foregoing represents no substantial contribution toward stability in the maritime industry on the Pacific coast in connection with which the Conciliation Service of the Department of Labor has generally performed the duties of mediation throughout the period the Maritime Labor Board has been in existence.

As Dr. Bloch states in his testimony, we did seek to have the Board make public demand upon the Ship Clerks' Union to discontinue an illegal strike and comply with its agreement by resorting to arbitration. Shipping on the Pacific coast after 7 years of continuous strikes and other violations of contract felt justified in demanding that the Board declare plainly for contract observance. We believe that there is nothing more in the interest of labor, so say nothing of the public welfare.

The best reply to Dr. Bloch's claim is that maritime labor agreements on the Pacific coast industriously exclude the Maritime Labor Board from the functions of mediation and arbitration.

The animus displayed in Dr. Bloch's testimony against Pacific coast shipping amply demonstrates that no useful service can be rendered by the Maritime Labor Board on the Pacific coast in the future. Pacific coast shipping requests your committee to allow it to pass out of existence.

Very truly yours,

F. P. FOISIE, *President.*

ADDITIONAL STATEMENT OF BJORNE HALLING, SECRETARY, CONGRESS OF INDUSTRIAL ORGANIZATIONS MARITIME COMMITTEE, FILED WITH THE SENATE COMMERCE COMMITTEE

We have carefully studied and considered the report of the Committee on Merchant Marine and Fisheries submitted in support of H. R. 4107, introduced by Chairman Bland, and it is our judgment that the Board should be permitted to function for another 2-year period as is contemplated in the Bland bill. We are particularly in favor of this bill because of the fifth reason advanced by Chairman Bland in support of his bill. This reason reads as follows:

"The continuation of title X will afford needed time for the careful consideration of the report and recommendations of the Maritime Labor Board submitted in compliance with title X of the Merchant Marine Act, and an opportunity to the Board to continue its study of the maritime industry and on

the basis of its added experience and knowledge be better enabled to submit further recommendations from time to time."

On March 1, 1940, the Maritime Labor Board, in compliance with section 1010 of the Merchant Marine Act of 1936, as amended, submitted a report to the President and to the Congress containing a number of recommendations with respect to labor relations in the maritime industry. These recommendations were based upon an exhaustive study of conditions of employment and labor relations in the maritime industry. The Congress of Industrial Organizations maritime unions, affiliated with the maritime committee are anxious to have the Congress give careful consideration to these recommendations and to approve those recommendations which have been endorsed in resolution No. 56, passed at the third constitutional convention of the Congress of Industrial Organizations, held at Atlantic City, N. J., in November 1940.

It is our belief that if the Board were discontinued now, very little attention would ever be paid to the recommendations of the Board, which should be adopted in order to promote the orderly processes of collective bargaining in the maritime industry which alone can create stable labor relations in our merchant marine.

I shall not take your time now to discuss the merits or demerits of the various proposals made by the Maritime Labor Board. Although we are in accord with only some of the recommendations of the Maritime Labor Board, we do not believe that the report should be shelved as so many other reports and recommendations of governmental agencies have been shelved and forgotten in the past.

The record shows that the following Congress of Industrial Organizations maritime unions have availed themselves of the services of the Board:

National Maritime Engineers' Beneficial Association.
American Communications Association, Marine Department.
Marine Cooks' and Stewards' Association of the Pacific.
National Maritime Union of America.
Inlandboatmen's Division of the National Maritime Union.
Inland-boatmen's Union of the Pacific.
International Longshoremen's & Warehousemen's Union.
Alaska Fishermen's Union.
United Fishermen's Union of the Pacific.
Copper River and Prince William Sound Fishermen's Union.
Columbia River Fishermen's Protective Union.
United Cannery, Agricultural, Packing & Allied Workers of America.

We are firmly of the opinion that any success which might be attributed to the work of the Maritime Labor Board in bringing about more stable labor relations in the maritime industry is due to the noncoercive provisions of title X. Under this law, neither the maritime employers nor the maritime employees or their representatives are obliged to call upon the Maritime Labor Board to mediate a dispute or to help them in the making of collective agreements. It is because of these voluntary provisions of title X that our unions have availed themselves from time to time of the services of the Board when our direct negotiations with the employers have become deadlocked.

We recommend that H. R. 4107 be enacted into law, and title X, together with the Maritime Labor Board, be continued. In addition, we urge that this committee will, as soon as possible, hold hearings upon the several recommendations of the Maritime Labor Board, and give us the opportunity to present our views regarding these recommendations.

RESOLUTION NO. 56, PASSED BY CONGRESS OF INDUSTRIAL ORGANIZATIONS' NATIONAL CONVENTION NOVEMBER 1940

Whereas the Maritime Labor Board, created as a result of an amendment to the Merchant Marine Act of 1936, submitted to the Congress and to the President on March 1, 1940, a series of recommendations for legislation designed to stabilize labor conditions in the shipping industry and bring the navigation laws into line with the requirements of modern steam transportation; and

Whereas the Congress of Industrial Organizations' maritime committee is in complete agreement with four major recommendations of the Maritime Labor Board on the grounds that such legislation would partially guarantee to seamen and maritime workers rights and privileges won by workers in other industries including the right to strike and the right of collective bargaining; and

Whereas those recommendations would (1) remove all doubts concerning the right of seamen to strike in domestic harbors; (2) guarantee collective bargaining rights to seamen employed on Maritime Commission ships, a right already supposedly guaranteed by the Wagner Act but violated consistently by the Maritime Commission; (3) withhold subsidies from operators who violate the Wagner Act; (4) provide machinery for voluntary mediation of maritime labor disputes with guaranties of the right to strike and guaranties against compulsion; and

Whereas the maritime unions are opposed to the isolation of maritime workers from the rest of labor because experience has shown that when workers in a particular industry are set apart for special consideration, they lose many rights which they have previously enjoyed: Therefore, be it

Resolved, That the Maritime Labor Board report be considered a true and factual report of conditions in the maritime industry, and that immediate steps be taken to secure enactment of legislation embodying the recommendations with which the maritime unions are in accord as listed above.

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U.S. Senate. Comm. on commerce.

Hearings of Maritime Labor Board.

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